



**BERKELEY CITY COUNCIL PUBLIC SAFETY COMMITTEE  
SPECIAL MEETING**

**Monday, July 20, 2020  
10:30 AM**

Committee Members:

Councilmembers Rashi Kesarwani, Rigel Robinson, and Susan Wengraf  
Alternate: Councilmember Lori Droste

**PUBLIC ADVISORY: THIS MEETING WILL BE CONDUCTED EXCLUSIVELY THROUGH  
VIDEOCONFERENCE AND TELECONFERENCE**

Pursuant to Section 3 of Executive Order N-29-20, issued by Governor Newsom on March 17, 2020, this meeting of the City Council Public Safety Policy Committee will be conducted exclusively through teleconference and Zoom videoconference. Please be advised that pursuant to the Executive Order, and to ensure the health and safety of the public by limiting human contact that could spread the COVID-19 virus, there will not be a physical meeting location available.

To access the meeting remotely using the internet: Join from a PC, Mac, iPad, iPhone, or Android device: Use URL - <https://us02web.zoom.us/j/83460613816>. If you do not wish for your name to appear on the screen, then use the drop down menu and click on "rename" to rename yourself to be anonymous. To request to speak, use the "raise hand" icon on the screen.

To join by phone: Dial **1-669-900-9128** and Enter Meeting ID: **834 6061 3816**. If you wish to comment during the public comment portion of the agenda, press \*9 and wait to be recognized by the Chair.

Written communications submitted by mail or e-mail to the Public Safety Policy Committee by 5:00 p.m. the Friday before the Committee meeting will be distributed to the members of the Committee in advance of the meeting and retained as part of the official record. City offices are currently closed and cannot accept written communications in person.

# AGENDA

## Roll Call

## Public Comment on Non-Agenda Matters

## Minutes for Approval

*Draft minutes for the Committee's consideration and approval.*

### 1. Minutes - July 6, 2020

## Committee Action Items

*The public may comment on each item listed on the agenda for action as the item is taken up. The Chair will determine the number of persons interested in speaking on each item. Up to ten (10) speakers may speak for two minutes. If there are more than ten persons interested in speaking, the Chair may limit the public comment for all speakers to one minute per speaker. Speakers are permitted to yield their time to one other speaker, however no one speaker shall have more than four minutes.*

*Following review and discussion of the items listed below, the Committee may continue an item to a future committee meeting, or refer the item to the City Council.*

2. **Ordinance: Public Right to Identify Officers**  
**From: Councilmember Robinson (Author), Councilmember Bartlett (Co-Sponsor), Councilmember Harrison (Co-Sponsor) and Councilmember Davila (Co-Sponsor)**  
**Referred: June 15, 2020**  
**Due: November 30, 2020**  
**Recommendation:** Adopt an ordinance prohibiting law enforcement from obscuring or failing to wear their identification, such as name and badge number, when it is required to be displayed, with additional penalties when done during the commission of a crime or violation of City or Department regulation or procedure, and refer to the City Manager to update City policy regarding undercover and plainclothes officers in crowd control situations to comply with the ordinance.  
**Financial Implications:** Negligible  
Contact: Rigel Robinson, Councilmember, District 7, (510) 981-7170

## Committee Action Items

- 3. Resolution: No Police Revolving Door**  
**From: Councilmember Robinson (Author), Councilmember Bartlett (Co-Sponsor) and Councilmember Harrison (Co-Sponsor)**  
**Referred: June 15, 2020**  
**Due: November 30, 2020**  
**Recommendation:** Adopt a resolution designating a history of serious misconduct and the act of previously resigning in the middle of a serious misconduct investigation as immediate disqualifiers in the Berkeley Police Department recruitment and selection process.  
**Financial Implications:** None  
Contact: Rigel Robinson, Councilmember, District 7, (510) 981-7170
- 4. Request for Scheduling a Presentation to the Public Safety Policy Committee by Police Chief Greenwood on Berkeley Police Department's Hiring Practices**  
**From: Councilmember Kesarwani**  
Contact: Rashi Kesarwani, Councilmember, District 1, (510) 981-7110
- 5. Recommendations on Use of Force Policy**  
**From: Councilmember Wengraf**  
Contact: Susan Wengraf, Councilmember, District 6 (510) 981-7160
- 6. Improving Hate Crimes Reporting and Response**  
**From: Mayor Arreguin (Author), Councilmember Bartlett (Co-Sponsor), Councilmember Wengraf (Co-Sponsor) and Councilmember Hahn (Co-Sponsor)**  
**Referred: July 13, 2020**  
**Due: December 28, 2020**  
**Recommendation:** Refer to the City Manager to review the following proposals and implement new systems for reporting and response to hate incidents and crimes: - Develop easy, transparent reporting systems for victims and/or their support networks, including a hate crimes reporting hotline (SF implemented) and/or an online reporting tool; -Privacy policies and procedures that will provide support for victims and encourage reporting; -Culturally appropriate personnel structures to respond to incidents that will encourage reporting, reduce fear and provide support; - Establishing supportive community based networks that provide clear, decisive response to hate crimes and hate incidents  
-The creation of accessible and multilingual reporting procedures and resources that deliver the clear message that hate has no place in Berkeley; -Engaging youth and BUSD to make it clear that bullying, racial slurs and vandalism are hate-fueled incidents; -Develop a public facing mapping tool that indicates patterns of hate incidents and crimes to help with outreach and prevention; -Other emerging policies and activities that support an inclusive and safe community.  
**Financial Implications:** See report  
Contact: Jesse Arreguin, Mayor, (510) 981-7100

## Committee Action Items

7. **Adopt an Ordinance Adding Chapter 2.64.170 to the Berkeley Municipal Code Regulating Police Acquisition and Use of Controlled Equipment** (*Revised Material Received*)  
**From: Councilmember Harrison (Author) and Councilmember Bartlett (Co-Sponsor)**  
**Referred: July 13, 2020**  
**Due: December 28, 2020**  
**Recommendation:** 1. Refer draft Ordinance to the Police Review Commission for further consideration and policy development and submit recommendations to the Public Safety Committee and author within 60 days; and  
2. Adopt an Ordinance Adding Chapter 2.64.170 to the Berkeley Municipal Code to Regulate Police Acquisition and Use of Controlled Equipment.  
**Financial Implications:** Staff time  
Contact: Kate Harrison, Councilmember, District 4, (510) 981-7140

## Unscheduled Items

*These items are not scheduled for discussion or action at this meeting. The Committee may schedule these items to the Action Calendar of a future Committee meeting.*

8. **Safety for All: The George Floyd Community Safety Act - Development of a Progressive Police Academy**  
**From: Councilmember Bartlett**  
**Referred: June 16, 2020**  
**Due: December 1, 2020**  
**Recommendation:** That the City Council refers to the Public Safety Committee to develop a progressive police academy and curriculum. That this progressive academy is hosted by the City of Berkeley and offered for use by the regional. The City should hire consultants and convene stakeholders including the Police Review Commission, a community task-force, and the Berkeley Police Department to create the academy's programmatic design. Once established, Berkeley Police Department recruits will attend this academy for basic training. The training program is intended to become revenue neutral. The program will be offered on a paid subscription basis to interested jurisdictions. Berkeley's progressive police academy envisions a curriculum that teaches recruits de-escalation, empathy, and the Critical Decision-Making Model (CDM). CDM encourages officers to challenge their biases, refrain from using force when possible, and build police-community trust. By reshaping police ideology through education, the City of Berkeley can tackle police brutality and police misconduct at their roots.  
**Financial Implications:** This recommendation would reallocate some funding from the department's Training and Standards division to the development of a new regional police academy. Once established, Berkeley's police academy would serve as a training institution for recruits from other progressive minded jurisdictions throughout the region. Attracting recruits from other cities and counties would potentially make this a revenue generating measure.  
Contact: Ben Bartlett, Councilmember, District 3, (510) 981-7130

## Items for Future Agendas

- Discussion of items to be added to future agendas

## Adjournment

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*Written communications addressed to the Public Safety Committee and submitted to the City Clerk Department will be distributed to the Committee prior to the meeting.*

*This meeting will be conducted in accordance with the Brown Act, Government Code Section 54953. Members of the City Council who are not members of the standing committee may attend a standing committee meeting even if it results in a quorum being present, provided that the non-members only act as observers and do not participate in the meeting. If only one member of the Council who is not a member of the committee is present for the meeting, the member may participate in the meeting because less than a quorum of the full Council is present. Any member of the public may attend this meeting. Questions regarding this matter may be addressed to Mark Numainville, City Clerk, (510) 981-6900.*



### COMMUNICATION ACCESS INFORMATION:

To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services specialist at (510) 981-6418 (V) or (510) 981-6347 (TDD) at least three business days before the meeting date.

~~~~~  
I hereby certify that the agenda for this meeting of the Standing Committee of the Berkeley City Council was posted at the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way, as well as on the City's website, on July 16, 2020.



Mark Numainville, City Clerk

## Communications

*Communications submitted to City Council Policy Committees are on file in the City Clerk Department at 2180 Milvia Street, 1st Floor, Berkeley, CA.*



**BERKELEY CITY COUNCIL PUBLIC SAFETY COMMITTEE  
REGULAR MEETING MINUTES**

**Monday, July 6, 2020  
10:30 AM**

Committee Members:

Councilmembers Rashi Kesarwani, Rigel Robinson, and Susan Wengraf  
Alternate: Councilmember Lori Droste

**PUBLIC ADVISORY: THIS MEETING WILL BE CONDUCTED EXCLUSIVELY THROUGH VIDEOCONFERENCE AND TELECONFERENCE**

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## AGENDA

**Roll Call:** 10:31 a.m. All present.

**Public Comment on Non-Agenda Matters:** 2 speakers.

### Minutes for Approval

*Draft minutes for the Committee's consideration and approval.*

#### 1. Minutes - February 3, 2020

**Action:** M/S/C (Robinson/Kesarwani) to approve the minutes as presented.

**Vote:** All Ayes.

### Committee Action Items

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*Following review and discussion of the items listed below, the Committee may continue an item to a future committee meeting, or refer the item to the City Council.*

#### 2. Ordinance: Public Right to Identify Officers

**From:** Councilmember Robinson (Author), Councilmember Bartlett (Co-Sponsor), Councilmember Harrison (Co-Sponsor), Councilmember Davila (Co-Sponsor)

**Referred:** June 15, 2020

**Due:** November 30, 2020

**Recommendation:** Adopt an ordinance prohibiting law enforcement from obscuring or failing to wear their identification, such as name and badge number, when it is required to be displayed, with additional penalties when done during the commission of a crime or violation of City or Department regulation or procedure, and refer to the City Manager to update City policy regarding undercover and plainclothes officers in crowd control situations to comply with the ordinance.

**Financial Implications:** Negligible

Contact: Rigel Robinson, Councilmember, District 7, (510) 981-7170

**Action:** The item was continued to the next meeting.



## Committee Action Items

**3. Resolution: No Police Revolving Door**

**From: Councilmember Robinson (Author), Councilmember Bartlett (Co-Sponsor), Councilmember Harrison (Co-Sponsor)**

**Referred: June 15, 2020**

**Due: November 30, 2020**

**Recommendation:** Adopt a resolution designating a history of serious misconduct and the act of previously resigning in the middle of a serious misconduct investigation as immediate disqualifiers in the Berkeley Police Department recruitment and selection process.

**Financial Implications:** None

Contact: Rigel Robinson, Councilmember, District 7, (510) 981-7170

**Action:** The item was continued to the next meeting.

**4. Safety for All: The George Floyd Community Safety Act - Development of a Progressive Police Academy**

**From: Councilmember Bartlett, Mayor Jesse Arreguin (Co-Sponsor) and Councilmember Cheryl Davila (Co-Sponsor)**

**Referred: June 16, 2020**

**Due: December 1, 2020**

**Recommendation:** That the City Council refers to the Public Safety Committee to develop a progressive police academy and curriculum. That this progressive academy is hosted by the City of Berkeley and offered for use by the regional. The City should hire consultants and convene stakeholders including the Police Review Commission, a community task-force, and the Berkeley Police Department to create the academy's programmatic design. Once established, Berkeley Police Department recruits will attend this academy for basic training. The training program is intended to become revenue neutral. The program will be offered on a paid subscription basis to interested jurisdictions. Berkeley's progressive police academy envisions a curriculum that teaches recruits de-escalation, empathy, and the Critical Decision-Making Model (CDM). CDM encourages officers to challenge their biases, refrain from using force when possible, and build police-community trust. By reshaping police ideology through education, the City of Berkeley can tackle police brutality and police misconduct at their roots.

**Financial Implications:** This recommendation would reallocate some funding from the department's Training and Standards division to the development of a new regional police academy. Once established, Berkeley's police academy would serve as a training institution for recruits from other progressive minded jurisdictions throughout the region. Attracting recruits from other cities and counties would potentially make this a revenue generating measure.

Contact: Ben Bartlett, Councilmember, District 3, (510) 981-7130

**Action:** 3 speakers. Discussion held. The item was continued and placed on the unscheduled items to allow the committee more time to explore the proposed item.

## Unscheduled Items

*These items are not scheduled for discussion or action at this meeting. The Committee may schedule these items to the Action Calendar of a future Committee meeting.*

- **None.**

## Items for Future Agendas

- Recommendations of Use of Force policy.
- Presentation on Berkeley Police Department Hiring Practices.

## Adjournment

**Action:** M/S/C (Wengraf/Robinson) to adjourn the meeting.

**Vote:** All Ayes.

Adjourned at 11:51 a.m.

I hereby certify that this is a true and correct record of Public Safety Policy Committee meeting held on July 6, 2020.

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Michael MacDonald, Assistant City Clerk



CITY COUNCILMEMBER  
**RIGEL ROBINSON**  
 DISTRICT 7

02

CONSENT CALENDAR  
 June 30, 2020

To: Honorable Mayor and Members of the City Council

From: Councilmembers Rigel Robinson (Author), Ben Bartlett (Co-Sponsor),  
 Kate Harrison (Co-Sponsor), and Cheryl Davila (Co-Sponsor)

Subject: Ordinance: Public Right to Identify Officers

### RECOMMENDATION

Adopt an ordinance prohibiting law enforcement from obscuring or failing to wear their identification, such as name and badge number, when it is required to be displayed, with additional penalties when done during the commission of a crime or violation of City or Department regulation or procedure, and refer to the City Manager to update City policy regarding undercover and plainclothes officers in crowd control situations to comply with the ordinance.

### BACKGROUND

In response to the police murders of George Floyd, Breonna Taylor, and countless other Black victims of police brutality and racism, hundreds of thousands of people have taken to the streets to demand change. From these protests emerged a troubling trend of law enforcement officers covering their badge numbers and name tags while on duty at protests and other crowd situations.

During the New York City protests, several NYPD officers wore “mourning bands” on their badges to honor their colleagues who had passed away from COVID-19. These bands were placed in a way that covered their badge numbers, in direct violation of NYPD Patrol Guide Section 204-17.<sup>1</sup>

In the City of Seattle, several SPD officers covered their badge numbers with black electrical tape to serve as makeshift mourning bands. There is currently no City or Department policy preventing officers from doing so. In a press conference, Seattle Mayor Jenny Durkan asserted that officers are allowed to cover their badge numbers because they are required to wear their names on the left side of their uniforms.<sup>2</sup>

In response to protests in Washington, D.C., the Trump administration deployed federal law enforcement officers in riot gear with no name tags, badge numbers, or other identifiable markings, who refused to disclose which agency they were representing.<sup>3</sup>

<sup>1</sup> <https://www.documentcloud.org/documents/6936059-National-Lawyers-Guild-Letter-to-NYPD.html>

<sup>2</sup> <https://southseattleemerald.com/2020/06/01/spd-officers-only-required-to-display-last-name-and-first-initial-despite-potential-name-overlap/>

<sup>3</sup> <https://www.nytimes.com/2020/06/04/us/politics/unidentified-police-protests.html>

Others reported sightings of officers, again with no identifying markers, armed with riot shields labeled "MILITARY POLICE." Members of the press and a representative from the National Guard later confirmed that these two groups of unidentified officers were both affiliated with the Bureau of Prisons.

Members of the public have a right to identify officers. It is the interest of preserving accountability and building community trust that a member of the public can easily identify an officer's agency, name, and badge number. At the very least, officers without clear identification can cause civilian confusion, prevent officers from recognizing officers from other agencies, allow officers to evade consequences and accountability, and erode public trust.

In the most egregious of cases, such as with the Trump administration's deployment of entirely unidentified officers, this practice can spark fears of unauthorized, non-state-sanctioned, often right-wing militias entering protests and acting with impunity. This is not uncommon in large protests or crowds, where members of III% and other far-right militia groups have been known to show up in riot gear. The practice of allowing unidentified law enforcement officers "functionally allows any unidentifiable individual to more easily pretend to be law enforcement."<sup>4</sup>

The Berkeley Police Department's current policy can be found in Policy 429.9, "General Event Procedures," which states that "(a) Employees dispatched or pre-assigned to a crowd situation shall be in a department approved uniform appropriate for their assignment. 1. Employees shall ensure their name and badge number are visible upon their uniform, and badge number is visible on their helmet, if worn."

In the case of the NYPD, police officers obscured their badge numbers even when explicitly prohibited by their Patrol Guide. It is crucial to not only implement policies banning the obscuring of identification for the sake of transparency, accountability, and democracy, but to also ensure that violation of such policies is met with appropriate consequences.

#### FINANCIAL IMPLICATIONS

Negligible.

#### ENVIRONMENTAL SUSTAINABILITY

None.

#### CONTACT PERSON

Councilmember Rigel Robinson, (510) 981-7170

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<sup>4</sup> <https://www.washingtonpost.com/politics/2020/06/03/dangerous-new-factor-an-uneasy-moment-unidentified-law-enforcement-officers/?fbclid=IwAR2WBP97c1n-WtXu4iu9W5by16ThRcBplMDSWIF4J9yvATMcgmqEuTLyMt8>

Attachments:

1: Ordinance

2: BPD Policy 429 "First Amendment Assemblies"

[https://www.cityofberkeley.info/uploadedFiles/Police/Level\\_3 -  
\\_General/429%20First\\_Amendment\\_Assemblies.pdf](https://www.cityofberkeley.info/uploadedFiles/Police/Level_3_-_General/429%20First_Amendment_Assemblies.pdf)

ORDINANCE NO. -N.S.

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That Berkeley Municipal Code Chapter 13.111 is added to read as follows:

**Chapter 13.111  
Obscuring of Police Officers' Identifying Information**

**13.111.010 Findings and Purpose.**

- A. In enacting this Chapter, the City finds that, in order for the public to have trust in the Berkeley Police Department, it is essential that individual members of the Department be accountable for their actions as officers and that the public, should they be abused or treated unjustly by a member of the Department, be able to report that conduct, and the officer responsible for that conduct, to the appropriate oversight body.
- B. In order for this accountability to take place, officers on duty must be identifiable to the public, by both name and badge number. In recognition of this need, a variety of departmental policies require officers to display their name and badge number on different places on their uniform and in different circumstances.
- C. The failure of an officer to properly display their identification corrodes the basic trust of the people in their government and undermines the mechanisms of accountability that have been put in place to ensure that officers uphold the values and standards of the City of Berkeley.
- D. It is the purpose of this Chapter to ensure that officers display their identification at all times when it is required under departmental and City policy, and that failure to do so is properly penalized.

**13.111.020 Definitions.**

- A. "City Policy" shall mean any ordinance, resolution, administrative regulation, departmental policy, or any other official expression of City procedures, policies, or practices.
- B. "Department" shall mean the Berkeley Police Department.
- C. "Officer" shall mean any sworn officer of the Berkeley Police Department.

**13.111.030 Display of Identifying Information.**

- A. Officers shall, at all times when they are on duty, be identifiable to the public by name and badge number.
- B. Officers shall observe all City policies on the form and placement of their identifying information.

**13.111.040 Exceptions.**

- A. Officers may refrain from displaying identifying information only when undercover or in plainclothes as explicitly authorized by City policy.
- B. This exception shall not apply in crowd control settings. No City policy shall authorize undercover or plainclothes officers in crowd control settings.

**13.111.050 Penalties.**

- A. Violation of section 13.111.030 shall be an infraction.
- B. The willful or repeated violation of section 13.111.030 shall be a misdemeanor and grounds for termination from the Department.
- C. Violation of section 13.111.030 by an officer while that officer is committing a crime or violating City policy shall be a misdemeanor and grounds for immediate termination.

**13.111.060 Severability.**

If any section, subsection, sentence, clause, phrase, or word of this Chapter, or any application thereof to any person or circumstance, is held to be invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions or applications of this Chapter. The Council of the City of Berkeley hereby declares that it would have passed this Chapter and each and every section, subsection, sentence, clause, phrase, and word not declared invalid or unconstitutional without regard to whether any other portion of this Chapter or application thereof would be subsequently declared invalid or unconstitutional.

Section 2. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Council Chambers, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.







CITY COUNCILMEMBER  
**RIGEL ROBINSON**  
 DISTRICT 7

03

CONSENT CALENDAR  
 June 30, 2020

To: Honorable Mayor and Members of the City Council  
 From: Councilmembers Rigel Robinson (Author), Ben Bartlett (Co-Sponsor), and  
 Kate Harrison (Co-Sponsor)  
 Subject: Resolution: No Police Revolving Door

RECOMMENDATION

Adopt a resolution designating a history of serious misconduct and the act of previously resigning in the middle of a serious misconduct investigation as immediate disqualifiers in the Berkeley Police Department recruitment and selection process.

BACKGROUND

Senate Bill 1421, which went into effect in 2019, allows the public and the press to access police misconduct records that were previously undisclosed.<sup>1</sup> In the process of reviewing this data, new light has been shed on the “revolving door” of police brutality, in which police officers fired for misconduct are simply re-hired by another jurisdiction.

A San Jose State police officer, fired in 2017 for excessive use of force, was then hired by the Los Gatos-Monte Sereno Police Department. An Alameda County deputy sheriff, fired in 2015 for soliciting prostitution and filing a false police report, was later hired by the Pinole Police Department.<sup>2</sup> An SFPD officer resigned one day before the Internal Affairs division ruled to discipline him for his fatal shooting of Luis Gongora Pat, a homeless man.<sup>3</sup> He was immediately hired by the Antioch Police Department, escaping the 45-day suspension and any consequences for his actions.

This revolving door phenomenon raises serious concerns about the ability of police departments to maintain accountability, create trust in the community, and eliminate police brutality and misconduct. Given the longstanding history of racial bias in policing and use of force nationwide, public trust is already badly damaged between law enforcement and many communities of color, particularly Black communities.

Furthermore, officers with histories of misconduct often cannot carry out a key part of their job: testifying in court. In *Brady v. Maryland* (1963), the Supreme Court ruled that

<sup>1</sup> [https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=201720180SB1421](https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180SB1421)

<sup>2</sup> <https://www.mercurynews.com/2019/07/23/editorial-records-expose-revolving-door-for-bad-california-cops/>

<sup>3</sup> <https://www.nbcbayarea.com/investigations/sf-officer-jumps-to-another-department-before-being-disciplined-for-a-shooting/2304029/>

prosecutorial suppression of evidence that could benefit the defendant violates the Due Process Clause of the Fourteenth Amendment.<sup>4</sup> Police officers' credibility can be called into question if they have a documented history of misconduct or dishonesty, which can jeopardize their testimonies and entire cases.

San Francisco Supervisor Shamann Walton introduced a resolution on June 2, 2020, attached below, "urging the city's Civil Service Commission to prohibit the Police and Sheriff's Departments from hiring law enforcement personnel with histories of serious misconduct."<sup>5</sup>

The City of Berkeley should follow suit by adopting the attached resolution and amending BPD Policy 1000, "Recruitment and Selection," to prohibit the hiring of any police officer who has a history of serious misconduct or who has previously resigned in the midst of a serious misconduct investigation.

#### FINANCIAL IMPLICATIONS

None.

#### ENVIRONMENTAL SUSTAINABILITY

None.

#### CONTACT PERSON

Councilmember Rigel Robinson, (510) 981-7170

#### Attachments:

1: Resolution

2: BPD Policy 1000 "Recruitment and Selection"

[https://www.cityofberkeley.info/uploadedFiles/Police/Level\\_3\\_-\\_General/1000%20Recruitment\\_and\\_Selection.pdf](https://www.cityofberkeley.info/uploadedFiles/Police/Level_3_-_General/1000%20Recruitment_and_Selection.pdf)

3: Proposed San Francisco Resolution

<https://sfgov.legistar.com/View.ashx?M=F&ID=8582276&GUID=8C81E0F1-7BDA-4F2D-888E-F90F6E1807A5>

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<sup>4</sup> <https://www.law.cornell.edu/supremecourt/text/373/83>

<sup>5</sup> <https://www.sfchronicle.com/bayarea/article/SF-supervisor-wants-a-ban-on-hiring-of-police-15311973.php>

RESOLUTION NO. ##,###-N.S.

BANNING THE HIRING OF POLICE OFFICERS WITH A HISTORY OF SERIOUS MISCONDUCT

WHEREAS, the Berkeley Police Department (BPD) is entrusted with keeping all community members in the City of Berkeley safe and enforcing laws; and

WHEREAS, all residents of Berkeley equally deserve to feel safe when interacting with police and should be able to trust that the officers tasked with protecting them have no prior history of excessive force, racial bias, or other significant misconduct; and

WHEREAS, there is a national crisis over repeated instances of police brutality and killings of Black people and persons of color; and

WHEREAS, there is a longstanding history of racial bias in policing nationwide, especially towards Black people; and

WHEREAS, George Floyd, a Black man, was killed by a Minneapolis Police Officer who kneeled on his neck for over eight minutes while he struggled to breathe and who had 17 prior complaints against him, had been responsible for multiple officer-involved shootings, but was permitted to remain on the police force; and

WHEREAS, the Council of the City of Berkeley acknowledges that communities of color have borne the burdens of inequitable social, environmental, economic, and criminal justice policies, practices, and investments, and that the legacy of these injustices has caused deep racial disparities throughout the juvenile justice and criminal justice system; and

WHEREAS, members of the public cannot fully trust law enforcement officers or feel safe if they are uncertain whether an officer with whom they interact had a prior history of significant misconduct or abuse; and

WHEREAS, it is difficult, and in some cases prohibited, especially under California law for members of the public to know about prior complaints or findings related to law enforcement officer misconduct; and

WHEREAS, public trust, including in the City of Berkeley, is badly damaged between law enforcement and many of the communities they serve, particularly communities of color; and

WHEREAS, the Council of the City of Berkeley aspires to hold the Berkeley Police Department to the highest standard of professionalism and integrity.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that Berkeley Police Department Policy 1000 be amended as follows:

## **Recruitment and Selection**

### **1000.1 PURPOSE AND SCOPE**

This policy provides a framework for employee recruiting efforts and identifying job-related standards for the selection process. This policy supplements the rules that govern employment practices for the Berkeley Police Department and that are promulgated and maintained by the Personnel and Training Bureau.

### **1000.2 POLICY**

In accordance with applicable federal, state and local law, the Berkeley Police Department provides equal opportunities for applicants and employees, regardless of race, gender expression, age, pregnancy, religion, creed, color, national origin, ancestry, physical or mental handicap, genetic information, veteran status, marital status, sex or any other protected class or status. The Department does not show partiality or grant any special status to any applicant, employee or group of employees unless otherwise required by law.

The Department will recruit and hire only those individuals who demonstrate a commitment to service and who possess the traits and characteristics that reflect personal integrity and high ethical standards.

### **1000.3 RECRUITMENT**

The Professional Standards Division Captain should employ a comprehensive recruitment and selection strategy to recruit and select employees from a qualified and diverse pool of candidates

The strategy should include:

- (a) Identification of racially and culturally diverse target markets.
- (b) Use of marketing strategies to target diverse applicant pools.
- (c) Expanded use of technology and maintenance of a strong internet presence. This may include an interactive department website and the use of department-managed social networking sites, if resources permit.
- (d) Expanded outreach through partnerships with media, community groups, citizen academies, local colleges, universities and the military.
- (e) Employee referral and recruitment incentive programs.
- (f) Consideration of shared or collaborative regional testing processes.

The Professional Standards Division Captain shall avoid advertising, recruiting and screening practices that tend to stereotype, focus on homogeneous applicant pools or screen applicants in a discriminatory manner.

The Department should strive to facilitate and expedite the screening and testing process.

### **1000.4 SELECTION PROCESS**

The Department shall actively strive to identify a diverse group of candidates that have in some manner distinguished themselves as being outstanding prospects. Minimally, the Department should employ a comprehensive screening, background investigation and selection process that assesses cognitive and physical abilities and includes review and verification of the following:

- (a) A comprehensive application for employment (including previous employment, references, current and prior addresses, education, military record)
- (b) Driving record
- (c) Reference checks
- (d) Employment eligibility, including U.S. Citizenship and Immigration Services (USCIS) Employment Eligibility Verification Form I-9 and acceptable identity and employment authorization documents consistent with Labor Code § 1019.1. This required documentation should not be requested until a candidate is hired. This does not prohibit obtaining documents required for other purposes.
- (e) Information obtained from public internet sites
- (f) Financial history consistent with the Fair Credit Reporting Act (FCRA) (15 USC § 1681et seq.)
- (g) Local, state and federal criminal history record checks
- (h) Computer Voice Stress Analysis (CVSA) exam (when legally permissible) (Labor Code § 432.2)
- (i) Medical and psychological examination (may only be given after a conditional offer of employment)
- (j) Hiring authority review
- (k) Records of police misconduct

#### 1000.4.1 VETERAN'S PREFERENCE

Qualifying veterans of the United States Armed Forces who receive a passing score on an entrance examination shall be ranked in the top rank of any resulting eligibility list. The veteran's preference shall also apply to a widow or widower of a veteran or a spouse of a 100 percent disabled veteran (Government Code § 18973.1).

#### 1000.5 BACKGROUND INVESTIGATION

Every candidate shall undergo a thorough background investigation to verify his/her personal integrity and high ethical standards, and to identify any past behavior that may be indicative of the candidate's unsuitability to perform duties relevant to the operation of the Berkeley Police Department (11 CCR 1953).

The narrative report and any other relevant background information shall be shared with the psychological evaluator. Information shall also be shared with others involved in the hiring process if it is relevant to their respective evaluations (11 CCR 1953).

#### 1000.5.1 NOTICES

Background investigators shall ensure that investigations are conducted and notices provided in accordance with the requirements of the FCRA and the California Investigative Consumer Reporting Agencies Act (15 USC § 1681d; Civil Code § 1786.16).

#### 1000.5.2 STATE NOTICES

If information disclosed in a candidate's criminal offender record information (CORI) is the basis for an adverse employment decision, a copy of the CORI shall be provided to the applicant (Penal Code § 11105).

#### 1000.5.3 REVIEW OF SOCIAL MEDIA SITES

Due to the potential for accessing unsubstantiated, private or protected information, the Professional Standards Division Captain shall not require candidates to provide passwords, account information or access to password-protected social media accounts (Labor Code § 980).

The Professional Standards Division Captain should consider utilizing the services of an appropriately trained and experienced third party to conduct open source, internet-based searches and/or review information from social media sites to ensure that:

- (a) The legal rights of candidates are protected.
- (b) Material and information to be considered are verified, accurate and validated.
- (c) The Department fully complies with applicable privacy protections and local, state and federal law.

Regardless of whether a third party is used, the Professional Standards Division Captain should ensure that potentially impermissible information is not available to any person involved in the candidate selection process.

#### 1000.5.4 DOCUMENTING AND REPORTING

The background investigator shall summarize the results of the background investigation in a narrative report that includes sufficient information to allow the reviewing authority to decide whether to extend a conditional offer of employment. The report shall not include any information that is prohibited from use, including that from private social media sites, in making employment decisions. The report and all supporting documentation shall be included in the candidate's background investigation file (11 CCR 1953).

#### 1000.5.5 RECORDS RETENTION

The background report and all supporting documentation shall be maintained in accordance with the established records retention schedule.

#### 1000.5.6 BACKGROUND INVESTIGATION UPDATE

A background investigation update may, at the discretion of the Chief of Police, be conducted in lieu of a complete new background investigation on a peace officer candidate who is reappointed within 180 days of voluntary separation from the Berkeley Police Department or is transferred to a different department within the City as provided in 11 CCR 1953(f).

### 1000.6 DISQUALIFICATION GUIDELINES

As a general rule, performance indicators and candidate information and records shall be evaluated by considering the candidate as a whole, and taking into consideration the following:

- Age at the time the behavior occurred
- Passage of time
- Patterns of past behavior
- Severity of behavior
- Probable consequences if past behavior is repeated or made public

- Likelihood of recurrence
- Relevance of past behavior to public safety employment
- Aggravating and mitigating factors
- Other relevant considerations

A candidate's qualifications will be assessed on a case-by-case basis, using a totality-of-the-circumstances framework.

#### 1000.6.1 DISQUALIFICATION FOR PAST MISCONDUCT

Notwithstanding section 1000.6 of this Policy, a candidate shall be immediately disqualified if:

- (1) The applicant has been the subject of a sustained finding or two unsustained complaints by different complainants against the applicant by any law enforcement agency or oversight agency, following an investigation and opportunity for administrative appeal by the applicant, that the applicant, while employed as a peace officer, engaged in serious misconduct, which includes but is not limited to the following: use of excessive force, racial bias, sexual assault, discrimination against any person or group based on race, gender, religion, nationality, or sexual orientation, or dishonesty directly relating to the reporting, investigation, or prosecution of a crime, or directly relating to the reporting of, or investigation of misconduct by another peace officer or custodial officer, including, but not limited to, any sustained finding of perjury, false statements, filing false reports, destruction, falsifying, or concealing of evidence; or
- (2) The applicant resigned or retired from their employment as a peace officer in any jurisdiction during the pendency of a disciplinary proceeding related to alleged serious misconduct by the applicant while they were employed as a peace officer, and the proceeding was suspended or terminated as a result of the applicant's resignation or retirement, until such a time that the applicant has been exonerated for the pending allegation.

#### **1000.7 EMPLOYMENT STANDARDS**

All candidates shall meet the minimum standards required by state law (Government Code §1029; Government Code § 1031; 11 CCR 1950 et seq.). Candidates will be evaluated based on merit, ability, competence and experience, in accordance with the high standards of integrity and ethics valued by the Department and the community. The California Commission on Peace Officer Standards and Training (POST) developed a Job Dimensions list, which is used as a professional standard in background investigations.

Validated, job-related and nondiscriminatory employment standards shall be established for each job classification and shall minimally identify the training, abilities, knowledge and skills required to perform the position's essential duties in a satisfactory manner. Each standard should include performance indicators for candidate evaluation. The Personnel and Training Bureau should maintain validated standards for all positions.

##### **1000.7.1 STANDARDS FOR OFFICERS**

Candidates shall meet the minimum standards established by POST (Government Code § 1029; Government Code § 1031; 11 CCR 1950 et seq.):

- (a) Free of any felony convictions
- (b) Citizen of the United States, or permanent resident alien eligible for and has applied for citizenship

- (c) At least 21 years of age at time of appointment
- (d) Fingerprinted for local, state and national fingerprint check
- (e) Good moral character as determined by a thorough background investigation (11 CCR1953)
- (f) High school graduate, passed the GED or other high school equivalency test and completed at least 60 college semester units or 90 college quarter units
- (g) Free from any physical, emotional or mental condition which might adversely affect the exercise of police powers (11 CCR 1954; 11 CCR 1955)
- (h) Candidates must also satisfy the POST selection requirements, including (11 CCR1950 et seq.):
  - 1. Reading and writing ability assessment (11 CCR 1951)
  - 2. Oral interview to determine suitability for law enforcement service (11 CCR1952)

In addition to the above minimum POST required standards, candidates may be subjected to additional standards established by the Department (Penal Code § 13510(d)).

#### 1000.7.2 STANDARDS FOR DISPATCHER

Candidates shall satisfy the POST selection requirements, including (11 CCR 1956):

- (a) A verbal, reasoning, memory and perceptual abilities assessment (11 CCR 1957)
- (b) An oral communication assessment (11 CCR 1958)
- (c) A medical and psychological evaluation (11 CCR 1960)





Rashi Kesarwani  
Councilmember, District 1

To: Honorable Members of the City Council Public Safety Policy Committee

From: Councilmember Rashi Kesarwani, District 1

Subject: Request for Scheduling a Presentation to the Public Safety Policy Committee by Police Chief Greenwood on Berkeley Police Department's Hiring Practices

Date: July 8, 2020

On Monday, July 6, 2020 the Public Safety Policy Committee held a meeting during which they discussed their interest in scheduling a presentation by Police Chief Greenwood addressing the Berkeley Police Department's hiring practices.


It is requested that the presentation cover the following areas:

- Recruitment practices, including schools, venues, and other avenues that are used to recruit sworn officer candidates and results of recruiting efforts;
- Screening done prior to hiring, including screening for (1) history of misconduct through review of disciplinary records (AB 1421), (2) associations of applicant (gang, white supremacist, other associations), (3) arrest record, and (4) other screening that occur;
- Training for new hires and ongoing trainings for sworn officers, including subject matter of trainings (such as de-escalation, implicit bias, crisis intervention, etc.), frequency of trainings, brief description of the nature of trainings;
- Demographics of sworn officers (percent breakdown for race, gender, age range, other available characteristics).

It is also requested that scheduling for this presentation should happen at the next available opportunity.

CONTACT: Rashi Kesarwani, Councilmember, District 1, (510) 981-7110





No Material  
Available for  
this Item

There is no material for this item.

**City Clerk Department**  
2180 Milvia Street  
Berkeley, CA 94704  
(510) 981-6900

**The City of Berkeley Public Safety Policy Committee Webpage:**  
[https://www.cityofberkeley.info/Clerk/Home/Policy\\_Committee\\_Public\\_Safety.aspx](https://www.cityofberkeley.info/Clerk/Home/Policy_Committee_Public_Safety.aspx)





Office of the Mayor

06

CONSENT CALENDAR

July 28, 2020

To: Honorable Members of the City Council  
From: Mayor Jesse Arreguin  
Subject: Improving Hate Crimes Reporting and Response

RECOMMENDATION

Refer to the City Manager to review the following proposals and implement new systems for reporting and response to hate incidents and crimes:

- Develop easy, transparent reporting systems for victims and/or their support networks, including a hate crimes reporting hotline (SF implemented) and/or an online reporting tool.
- Privacy policies and procedures that will provide support for victims and encourage reporting
- Culturally appropriate personnel structures to respond to incidents that will encourage reporting, reduce fear and provide support
- Establishing supportive community based networks that provide clear, decisive response to hate crimes and hate incidents
- The creation of accessible and multilingual reporting procedures and resources that deliver the clear message that hate has no place in Berkeley,
- Engaging youth and BUSD to make it clear that bullying, racial slurs and vandalism are hate-fueled incidents,
- Develop a public facing mapping tool that indicates patterns of hate incidents and crimes to help with outreach and prevention,
- Other emerging policies and activities that support an inclusive and safe community; and

SUMMARY

Hate crime victims are usually targeted not because of anything they have said or done, but because of who they are or what they believe in. As such, hate crimes violate the very basic tenets of our democracy by targeting the right of every resident to be themselves and live safely and freely.

Perpetrators of hate crimes seek to send a message to the victim and his or her community that they are unwanted, that they do not belong, and that the community at large does not care about what happens to them. While we cannot eliminate all hate crimes, we can drastically diminish their impact by the approach taken by the City when hate crimes or incidents occur. We can send an even stronger counter-message to hate by developing a strong community-based infrastructure to support victims and ensure that accurate and transparent reporting and accountability occurs.

## BACKGROUND

A 1969 federal hate crimes law was expanded in 2009 to provide protections beyond federally protected activity. The Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act gave the federal government the authority to investigate and prosecute crimes against victims targeted because of race, ethnicity, sexual orientation, gender identity, religion or disability. Proponents of this expansion argued that hate crimes are worse than regular crimes without a prejudiced motivation from a psychological perspective. The time it takes to mentally recover from a hate crime is almost twice as long as it is for a regular crime.

Sadly, Berkeley is not immune to hate incidents and hate crimes and has policies for police response to address hate incidents. (Attachment #1) In 2001, after a rise in violence and hate speech resulting from the September 11, 2001 terrorist attacks, Berkeley declared itself a Hate-Free Zone for those of Middle-Eastern descent and of Muslim faith in order to provide sanctuary and support and discourage hate crimes.

More recently, Berkeley has seen an increase in the number of hate incidents and crimes. Since Donald Trump's election in 2016, there has been a reported increase in hate crimes throughout the country. In response to this alarming trend, the Berkeley City Council adopted Resolution No. 67,794-N.S. The resolution recitals (Attachment #2) described the increase in hate incidents:

*“Communities all over America have witnessed a rise in violence directed towards minorities, particularly against those who are Immigrants, of Middle Eastern descent, Muslim, Jewish, Asian-American, African-American, Hispanics, Women, Disabled, part of LGBTQQA+ communities, and advocating for equality; and”*

*“Hate speech, hate behavior and hate crimes appear to be proliferating now, after many years of progress at reducing explicit public displays of hate; and”*

On June 19, 2020, two black children learning to rock climb at the popular and picturesque Indian Rock Park in the Berkeley Hills were subjected to a racial slur by a white passerby.<sup>1</sup> And on that same day, Black Lives Matter posters were torn down on Hillcrest Road and a racist altercation occurred concerning the efforts of children chalking their support for their black neighbors. Back on October 23, 2017, at Berkeley's Pacific Center a man burned a rainbow flag and punched a volunteer.<sup>2</sup> And on November 28, 2018, someone entered the Pacific School of Religion campus chapel and drew a swastika inside a bible on display. A piece of paper with the words 'Adolph Hitler' scribbled on it was tacked onto a nearby bulletin board.<sup>3</sup>

Acts of hate violence or threats should be viewed as serious and investigations given priority. Such acts generate fear and concern in victims and the public; and have the potential for recurring, escalating and possibly cause retaliation. They divide us, intimidate our most vulnerable citizens and damage our collective spirit. Without

<sup>1</sup> <https://www.berkeleyside.com/2020/06/19/black-girls-at-climbing-camp-in-indian-rock-park-called-n-word-by-white-woman>

<sup>2</sup> <https://www.berkeleyside.com/2017/10/23/man-burns-rainbow-flag-punches-volunteer-pacific-center-berkeley>

<sup>3</sup> <https://www.berkeleyside.com/2018/11/28/pacific-school-of-religion-startled-by-anti-semitic-incidents>

addressing these incidents and crimes, communities experience broad harms – well beyond those of the individual victims.

Hate requires a visible and swift response. When such incidents occur the community must be reminded that an attack on one is an attack on all. It is important that Berkeley take proactive steps to create a system of response and reporting and enact procedures to prevent hate incidents. We must remain vigilant and committed to the visible rejection of hate, racism and bigotry.

### CURRENT SITUATION AND ITS EFFECTS

Hate Crimes targeted at people based on their perceived race, color, national origin, gender, gender identity, sexual orientation, religion and/or disability are a widespread problem in communities across the United States. However, an acute discrepancy exists between the number of actual hate crimes committed, and the number officially reported to the FBI. This results in significant challenges for a community:

- Hate and bias crimes can escalate if not identified, addressed and tracked
- Without accurate data, appropriate resources cannot be allocated to address tensions and violence in communities
- Inadequate response to hate crimes can leave affected victims feeling unheard and unsafe

Furthermore, there are serious factors that relate to underreporting:

- Communities targeted for hate may not feel safe or comfortable reporting hate crimes to law enforcement
- Long-standing distrust among some communities leads victims to believe law enforcement will be unwilling or unable to help
- Immigrant communities may fear deportation or other consequences if they step forward
- Victims who speak different languages or have disabilities may not report due to cumbersome, inaccessible hate crime reporting procedures
- Individuals and targeted communities may fear retaliation if they report incidents.

Approximately 25% of victims<sup>4</sup> do not report a hate crime because they do not believe the police would or could help. These statistics point out the reluctance of many targeted groups due to historical difficulties with police departments or a feeling that their interests will not be protected. For victims that are not comfortable reporting to law enforcement, a trusted intermediary or community group should be part of the reporting process, familiar with agency policies and demand accurate, transparent reporting protocols.

The Department of Justice recommends creating and fostering partnerships within community to respond to hate incidents and crime – communities need to be involved in the solutions. They also note that victims of hate and other vulnerable individuals are sometimes mistrustful or fearful of law enforcement and turn first to community groups

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<sup>4</sup> <https://www.bjs.gov/content/pub/pdf/hcv0415.pdf>

or faith-based organizations for support and as a link to law enforcement and other authorities.<sup>5</sup>

California Attorney General, Xavier Becerra, launched a new hate crime prevention website, intended to be a one-stop shop for information and resources, and a Hate Crime Rapid Response Team. At the time it was launched, AG Becerra stated, “When someone commits a crime motivated by hate, it is not just an attack on one innocent person, but an attack on the entire State.”<sup>6</sup>

Los Angeles has recently launched LA vs HATE in partnership with Los Angeles County’s Human Relations Commission and Department of Mental Health. 211 LA hosts a hotline for individuals who have been victims or witnesses to acts of bullying or incidents motivated by hate or discrimination to connect with services. San Diego has created a San Diego Regional Hate Crime Coalition<sup>7</sup> that coordinates outreach, education, and dialogue regarding bullying, hate incidents and hate crimes and also developed a Model Hate Crime Protocol Procedure Manual in coordination with their Hate Crimes Community Working Group.<sup>8</sup>

When a hate crime occurs:

1. Victimization is projected outward to all members of the victim’s wider community.
2. Other members of the same group feel victimized.
3. Members of other commonly targeted groups are reminded of their vulnerability to similar attacks.
4. The community is polarized into an “us-versus-them” mentality.
5. It impedes community spirit, morale, and growth.
6. Property values are lowered.
7. It increases security concerns at schools, churches, businesses, and private homes.

## RATIONALE FOR RECOMMENDATIONS

While Berkeley police do respond to hate crimes and incidents, real change and support for victims will only occur with a constructed, socially appropriate response from an organized community and neighborhoods infrastructure. City and community mechanisms must be developed to support impacted community members and organizations,

- Consistent communication that the City takes hate crimes and bias incidents seriously
- Online and call-center reporting systems that will allow the incident or crime to be directed to the appropriate resource within the City of Berkeley
- Conduct outreach to individuals and communities targeted for hate to listen to their concerns, assist with their needs and respect requests for privacy
- Develop easy, transparent reporting resources for victims and/or their support networks including accessible and multilingual reporting procedures

<sup>5</sup> <https://www.justice.gov/hatecrimes/preventing-hate-crimes-your-community>

<sup>6</sup> <https://oag.ca.gov/hatecrimes>

<sup>7</sup> <https://sdnohate.org>

<sup>8</sup> [https://www.ncjrs.gov/ovc\\_archives/reports/responding/files/appendixA.pdf](https://www.ncjrs.gov/ovc_archives/reports/responding/files/appendixA.pdf)



- Engage youth to make it clear that bullying, racial slurs and vandalism are hate-fueled incidents
- Establish culturally appropriate and supportive networks that prioritizes clear, decisive response to hate crimes and hate incidents, ongoing collaboration to promote healing and strengthen prevention activities
- Engage and organize the community when it is necessary to stand up to hate groups

Victims should be given an option of first speaking with a public health official or community support group before officially reporting a hate event to Berkeley Police. This could encourage reporting for those that would be otherwise inclined to stay silent. It would also provide support for the victims if it is determined that reporting the crime to Berkeley Police is necessary.

Engaging the community to respond to hate incidents, empowers all to stand up against hateful acts. The response from the Berkeley community to the tragic events of Charlottesville, and the still evident Berkeley Stands United Against Hate signs, speaks to the powerful message embraced by an entire community and region. Ensuring that there are mechanisms in place to rally the community when hate happens will only make Berkeley safer and more inclusive.

#### FINANCIAL IMPLICATIONS

Unknown. Staff time to determine the optimal approaches for hate crime reporting, organizing an internal response team and engaging the community for real-time action. Possible resource development that educates the public about what to do when a hate crime occurs.

#### ENVIRONMENTAL SUSTAINABILITY

Consistent with Berkeley's policies for a safe and resilient community

#### CONTACT PERSON

Mayor Jesse Arreguin 510-981-7100

#### Attachments:

1. Berkeley Police Department Policy 319, Hate Crimes
2. Resolution No. 67,794-N.S., "Expand the City's Hate-Free Zone Resolution in Order to Support Vulnerable Individuals and Communities", December 13, 2016, Berkeley City Council

## Hate Crimes

### 319.1 PURPOSE AND SCOPE

The purpose of this policy is to meet or exceed the provisions of Penal Code § 13519.6(c) and provides members of this department with guidelines for identifying and investigating incidents and crimes that may be motivated by hatred or other bias.

#### 319.1.1 DEFINITIONS

**Hate crimes** - A criminal act committed in whole or in part, because of one or more of the following actual or perceived characteristics of the victim (Penal Code § 422.55; Penal Code § 422.56; Penal Code § 422.57):

- (a) Disability
- (b) Gender, gender identity or gender expression
- (c) Nationality
- (d) Race or ethnicity
- (e) Religion
- (f) Sexual orientation
- (g) Association with a person or group with one or more of these actual or perceived characteristics
- (h) Examples of hate crimes include, but are not limited to:
  1. Interfering with, oppressing or threatening any other person in the free exercise or enjoyment of any right or privilege secured by the constitution or laws because of one or more of the actual or perceived characteristics of the victim (Penal Code § 422.6).
  2. Defacing a person's property because of one or more of the actual or perceived characteristics of the victim (Penal Code § 422.6(b)).
  3. Terrorizing a person with a swastika or burning cross (Penal Code § 11411).
  4. Vandalizing a place of worship (Penal Code § 594.3).

The federal Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act expands federal hate crimes to include crimes motivated by a victim's actual or perceived sex, sexual orientation, gender identity or disability (18 USC § 249).

**Victim** - Includes, but is not limited to, a community center, educational facility, entity, family, group, individual, office, meeting hall, person, place of worship, private institution, public agency, library or other victim or intended victim of the offense (Penal Code § 422.56).

## *Hate Crimes*

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### **319.2 POLICY**

The Berkeley Police Department recognizes and places a high priority on the rights of all individuals guaranteed under the state and federal constitution and incorporated in state and federal law.

### **319.3 PREVENTION AND PREPARATION**

While it is recognized that not all crime can be prevented, this department is committed to taking a proactive approach to preventing and preparing for likely hate crimes by, among other things:

- (a) Make an affirmative effort to establish contact with persons and groups within the community who are likely targets of hate crimes and forming networks that address prevention and response.
- (b) Accessing assistance by, among other things, activating the California Department of Justice Hate Crime Rapid Response Protocol when necessary.
- (c) Providing victim assistance and community follow-up as outlined below.
- (d) Educating community and civic groups about hate crime laws.
- (e) Establishing a community relations liaison to work with community organizations and leaders to coordinate public meetings, local group meetings and school assemblies on recognizing, preparing for and preventing hate crimes.

### **319.4 HATE CRIME VS. HATE INCIDENT**

Many acts of hate violence fall under the category of a hate crime, which is punishable by law. However, not all hate incidents are hate crimes. For example, verbal name calling, although offensive, is not a crime and must be accompanied by a viable threat of violence and the ability to carry out the threat.

For a hate incident to be categorized as a hate crime, it must violate a criminal law. A hate crime might include threatening phone calls, physical assaults, destruction of property, bomb threats, and/or the disturbance of religious meetings.

A hate incident that does not constitute a hate crime might include hate speech, display of offensive materials on one's property, the distribution of hate materials in public places, and the posting of hate materials that does not result in property damage. Even if a hate incident does not rise to the level of a hate crime, the victim will still need support and assistance and may have an actionable civil claim as well.

### **319.5 CRIMINAL STATUTES**

The key criminal statutes on hate crimes are

- (a) Penal Code § 422.6 which provides that it is a misdemeanor to both (a) threaten or injure an individual or (b) damage property because of the real or perceived beliefs or characteristics of the other person; and
- (b) Penal Code § 422.7 which provides that it is a felony to both (a) threaten or injure an individual (when the injury could or does result in great bodily injury) or (b) damage

## Hate Crimes

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property (when the damage is in excess of \$950) because of the real or perceived beliefs or characteristics of the other person.

### 319.6 INVESTIGATIONS

Whenever any member of this department receives a report of a suspected hate crime or other activity that reasonably appears to involve a potential hate crime, the following should occur:

- (a) Assigned officers should promptly contact the victim, witness or reporting party to investigate the matter further as circumstances may dictate
- (b) A supervisor should be notified of the circumstances as soon as practical.
- (c) Once in-progress aspects of any such situation have been stabilized (e.g., treatment of victims, apprehension of suspects at the scene), the assigned officers should take all reasonable steps to preserve evidence that establishes a possible hate crime.
- (d) Based upon available information, officers should take appropriate action to mitigate further injury or damage to potential victims or the community.
  1. Officers should contact the property owner to remove any evidence that cannot be physically removed (i.e., painted words or signs on a wall) by the officer once the offense is documented.
- (e) The assigned officers should interview available witnesses, victims and others to determine what circumstances, if any, indicate that the situation may involve a hate crime.
  1. No victim of or a witness to a hate crime who is not otherwise charged with or convicted of a crime under state law may be detained for or turned over to federal authorities exclusively for any actual or suspected immigration violation (Penal Code § 422.93(b))
  2. Statements of victims and witnesses should be audio or video recorded if practicable (see the Portable Audio/Video Recorders Policy).
- (f) Depending on the situation, the assigned officers or supervisor may request additional assistance from detectives or other resources.
- (g) The assigned officers should include all available evidence indicating the likelihood of a hate crime in the relevant reports. All related reports should be clearly marked as "Hate Crimes" and, absent prior approval of a supervisor, should be completed and submitted by the assigned officers before the end of the shift.
- (h) The assigned officers will provide the victims of any suspected hate crime with a brochure on hate crimes (Penal Code § 422.92). Such brochures will also be available to members of the general public upon request. The assigned officers should also make reasonable efforts to assist the victims by providing available information on local assistance programs and organizations.
- (i) The assigned officers and supervisor should take reasonable steps to ensure that any such situation does not escalate further and should provide information to the victim regarding legal aid (e.g., Possible Temporary Restraining Order through the District Attorney or City Attorney Penal Code § 136.2 or Civil Code § 52.1 as indicated).

## *Hate Crimes*

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### 319.6.1 SUPERVISOR RESPONSIBILITY

The supervisor should confer with the initial responding officers to identify reasonable and appropriate preliminary actions. The supervisor should:

- (a) Review related reports to verify whether the incident is appropriately classified as a hate crime for federal and state bias crime-reporting purposes.
- (b) Notify other appropriate personnel in the chain of command, depending on the nature and seriousness of the offense and its potential inflammatory and related impact on the community.
- (c) Consider the need for further action to be taken for the protection of the victims or vulnerable sites, such as assigning an officer at specific locations that could become targets or increase neighborhood surveillance.
- (d) Ensure that members who are responsible for the conduct and maintenance of information on criminal groups are notified and that they make appropriate inquiries and entries into criminal intelligence systems.

### 319.6.2 DETECTIVE BUREAU RESPONSIBILITY

If a hate crime case is assigned to the Detective Bureau, the assigned detective will be responsible for:

- (a) Coordinating further investigation with the District Attorney and other appropriate law enforcement agencies.
- (b) Maintaining contact with the victims and other involved individuals, as needed.
- (c) Maintaining statistical data and tracking on suspected hate crimes as indicated for required reporting to the Attorney General (Penal Code § 13023). See the Records Management Policy.
- (d) Make reasonable efforts to identify additional witnesses.
- (e) Utilize available criminal intelligence systems as appropriate.
- (f) Provide the supervisor and the Public Information Officer (PIO) with information that can be responsibly reported to the media.
  - 1. When appropriate, the PIO should reiterate that the hate crime will not be tolerated and will be taken seriously.

### **319.7 TRAINING**

All members of this department will receive POST-approved training on hate crime recognition and investigation as provided by Penal Code § 13519.6. Training should also include recognition of bias motivators such as ranges of attitudes and perceptions toward a specific characteristic or group.

RESOLUTION NO. 67,794–N.S.

Attachment #2

EXPAND BERKELEY HATE FREE ZONE TO SUPPORT VULNERABLE INDIVIDUALS  
AND COMMUNITIES

WHEREAS, after a rise in violence and persecution resulting from the attacks of September 11, 2001, the City established Berkeley as a Hate-Free Zone for those of Middle-Eastern descent and of Muslim faith in order to provide sanctuary and support; and

WHEREAS, communities all over America have witnessed a rise in violence directed towards minorities, particularly against those who are Immigrants, of Middle Eastern descent, Muslim, Jewish, Asian-American, African-American, Hispanics, Women, Disabled, part of LGBTQQIA+ communities, and advocates for equality; and

WHEREAS, members of the affected communities have expressed their deep concerns for their safety and well-being; and

WHEREAS, hate speech, hate behavior and hate crimes appear to be proliferating now, after many years of progress at reducing explicit public displays of hate; and

WHEREAS, immigrant families and children live in fear of separation and possible permanent loss of loved ones who may be forcibly returned to a country where their lives are in danger; and

WHEREAS, numerous Muslims are facing, what the Council on American-Islamic Relations described as an accelerated spike in Islamophobia and Anti-Muslim rhetoric that have triggered an unbelievable spike of hate crimes targeting Muslims and other minorities with more than 100 incidents specifically targeting Muslims post-election; and

WHEREAS, the Jewish community has faced what the Anti-Defamation League (ADL) described as “growing numbers of reports about anti-Semitic, racist, and bigoted incidents, including vandalism, assaults and harassment, from around the country”; and

WHEREAS, according to Anirvan Chatterjee, the curator of the Berkeley South Asian Radical History Walking Tour that numerous Asian American community members experienced harassments including words like “go back to where you come from”, even when many of those members are in fact from the United States; and

WHEREAS, the disabled community has experienced ridicule and disrespect, on top of practical fears of privatization and reductions to life saving health support programs; and

WHEREAS, the LGBTQQIA+ community fears the ongoing failure to ban employment discrimination nationwide will be compounded by high ranking officials including Cabinet nominees who demean and disparage them, and risk rollbacks of the great progress seen in recent years of positive executive branch actions; and

WHEREAS, an estimated 1,500 Berkeley high students walked out of their classes to protest against the prospects of the new Trump administration; and

WHEREAS, the Southern Poverty Law Center has counted over 867 reported incidents of election related intimidation and harassment as of November 29.

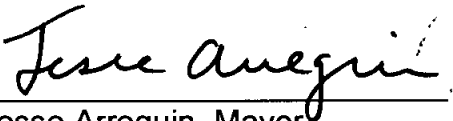
NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City of Berkeley sends a clear message to all of our vulnerable threatened communities that we accept them, value them and respect them. Furthermore our city and our leaders will offer solidarity, stand up and speak out against hate speech, hate behavior and hate crimes, and that we will do everything we can to protect people during these difficult days.

The foregoing Resolution was adopted by the Berkeley City Council on December 13, 2016 by the following vote:

Ayes: Bartlett, Davila, Droste, Hahn, Maio, Wengraf, Worthington and Arreguin.

Noes: None.

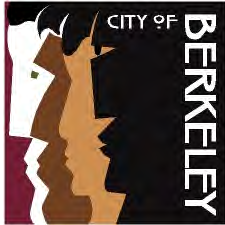
Absent: None.

  
\_\_\_\_\_  
Jesse Arreguin, Mayor

Attest:   
\_\_\_\_\_  
Mark Numainville, City Clerk







Kate Harrison  
Councilmember District 4

**07**

## **REVISED AGENDA MATERIAL**

**Meeting Date: July 28, 2020**

**Item Number: 42**

**Item Description: Adopt an Ordinance Adding Chapter 2.100 to the Berkeley Municipal Code Regulating Police Acquisition and Use of Controlled Equipment**

**Submitted by: Councilmember Harrison**

### **Revisions**

1. Modified transmittal and ordinance to conform to BMC numbering format.
2. Added background information in transmittal.
3. Fixed typos in ordinance.



Kate Harrison  
Councilmember District 4

ACTION CALENDAR

July 28, 2020

To: Members of the City Council

From: Councilmember Harrison

Subject: Adopt an Ordinance Adding Chapter 2.~~64100.170~~ to the Berkeley Municipal Code Regulating Police Acquisition and Use of Controlled Equipment

RECOMMENDATION

1. Refer draft Ordinance to the Police Review Commission for further consideration and policy development and submit recommendations to the Public Safety Committee and author within 60 days; and
2. Adopt an Ordinance Adding Chapter 2.~~64.170~~100 to the Berkeley Municipal Code to Regulate Police Acquisition and Use of Controlled Equipment.

BACKGROUND

The acquisition and use of certain police equipment and weapons pose grave threats to civil liberties and public health and safety. It is in the public interest that acquisition of any police equipment with the potential to impose physical or psychological harm to community members should be thoroughly reviewed by the Police Review Commission and Council; legally enforceable safeguards, including transparency, oversight, and accountability measures, must be in place to protect the public's welfare, safety, civil rights, and civil liberties before certain categories of equipment are funded, acquired, or used.

The Council already relies on the Police Review Commission to review certain Police equipment acquisitions and uses. In addition, the Council has imposed limits directly, for example: limiting further acquisition of military material from the Department of Defense 1033 Program, acquisitions of armored vehicles and surveillance equipment, the use of pepper spray in crowd control situations, and the use of tear gas. However, the City currently lacks a comprehensive framework for reviewing and regulating the acquisition of a broad spectrum of potentially problematic equipment, including use of such equipment by other departments during mutual aid events.

Adopt an Ordinance Adding Chapter 2.64.170100 to the Berkeley Municipal Code Regulating Police Acquisition and Use of Controlled Equipment

The Oakland Police Commission is currently in the process of recommending to the Oakland City Council a new policy inspired by Berkeley's Surveillance Technology Ordinance and California Assembly Bill AB3131, a prior attempt to regulate military equipment statewide, to thoroughly consider the proposed acquisition and use of potentially problematic police equipment *before* community members can be harmed.

The list of Controlled Equipment defined in the ordinance is in part inspired by equipment definitions President Obama's Executive Order 13688 and California Assembly Bill AB3131. The list of equipment is not exhaustive and may be added to or subtracted from as needed.

The primary concepts of the proposed Oakland and Berkeley Ordinances are as follows:

1. Controlled Equipment Use Policies and Controlled Equipment Impact Reports must be reviewed and adopted before the use of Controlled Equipment may be authorized.
2. Requires the Police Department to submit Controlled Equipment Use Policies and Controlled Equipment Impact Reports to the Police Commission for review and recommendation.
3. Requires the Police Commission to review submissions at a public hearing and determine whether such submissions warrant a recommendation to Council for adoption or rejection.
4. Requires the City Council to ratify or reverse the Police Commission's recommendations following the Commission's review of Controlled Equipment Use Policies.
5. Requires the Police Department to submit an annual report describing the use of authorized Controlled Equipment during the year prior.
6. Requires the Police Commission to review the annual Controlled Equipment report, determine whether covered equipment has complied with the standards for approval, and recommend renewal or modification of Use Policies, or the revocation of authorization for use.
7. Requires the City Council to ratify or reverse the Police Commission's recommendations following the Commission's review of the Controlled Equipment annual report.

Adopt an Ordinance Adding Chapter 2.64.170100 to the Berkeley Municipal Code Regulating Police Acquisition and Use of Controlled Equipment

The Berkeley Surveillance Ordinance model of thoroughly considering the impact of acquiring and using certain technology has served the public well since adoption in early 2018. A similar regime is appropriate for consideration of police equipment.

Similar to the Surveillance Ordinance, the item provides the Police Department with a year from the date of passage to submit Controlled Equipment Use Policies and Controlled Equipment Impact Statements for approval. This process will assist the public, Council and Commission in better understanding the scope of controlled equipment inventory, use policies and impact.

The ordinance includes enforcement remedies for alleged violations of the ordinance, including injunctive relief, declaratory relief, writ of mandate in the Superior Court of the State of California to enforce this Ordinance and attorneys' fees. Individuals subject to the use of Controlled Equipment in violation of this Ordinance may institute proceedings in the Superior Court of the State of California against the City of Berkeley and shall be entitled to recover actual damages (but not less than liquidated damages of one thousand dollars (\$1,000.00) or one hundred dollars (\$100.00) per day for each day of violation, whichever is greater). Violators of the ordinance may result in consequences that may include retraining, suspension, or termination, subject to due process requirements and applicable City policies.

The intent of this item is to provide the Police Review Commission with sufficient time to review the draft ordinance and provide input and feedback to the Public Safety Committee and author before proceeding to the full Council.

#### FINANCIAL IMPLICATIONS

Staff time.

#### ENVIRONMENTAL SUSTAINABILITY

No environmental impact.

#### CONTACT

Councilmember Kate Harrison  
kharrison@cityofberkeley.info | 510-981-7140

#### ATTACHMENTS:

1. Ordinance

ORDINANCE NO. -N.S.

ADDING A NEW CHAPTER 2. ~~10064.170~~ TO THE BERKELEY MUNICIPAL CODE REGULATING POLICE ACQUISITION AND USE OF CONTROLLED EQUIPMENT

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. The Berkeley Municipal Code Chapter 2. ~~64.100.170~~ is amended to read as follows:

**Chapter 2. ~~64.170~~100  
POLICE EQUIPMENT AND COMMUNITY SAFETY ORDINANCE**

**Sections:**

- 2. ~~6100.0104.170~~ Name of Ordinance**
- 2. ~~10064.020~~171 Definitions**
- 2. ~~64.172~~100.030 Acquisition and Use of Controlled Equipment**
- 2. ~~6100.0404.173~~ Reports on the Use of Controlled Equipment**
- 2. ~~64.174~~100.050 Enforcement**
- 2. ~~64.175~~100.060 Transparency**
- 2. ~~64.176~~100.070 Whistleblower Protections**
- 2. ~~64.177~~100.080 Severability**

**2. ~~64100.010~~170.010 Name of Ordinance.**

(A) This Ordinance shall be known as the Police Equipment and Community Safety Ordinance.

**2. ~~64.1710.020.100.020~~ Definitions**

(A) "Controlled Equipment" means equipment that is military or militaristic in nature and includes, but is not limited to, all of the following:

(1) Special-purpose wheeled vehicles that are either built or modified to provide ballistic protection to their occupants, such as mine-resistant ambush protected (MRAP) vehicles or armored personnel carriers.

(a) Police versions of standard passenger vehicles are specifically excluded from this section.

(2) Multi-purpose wheeled vehicles that are either built to operate both on-road and off-road, such as a high mobility multipurpose wheeled vehicle (HMMWV), commonly referred to as a Humvee, a two and one-half-ton truck, or a five-ton truck, or vehicles built or modified to use a breaching or entry apparatus as an attachment.

(a) Unarmored all-terrain vehicles (ATVs) and motorized dirt bikes are specifically excluded from this section.

- (3) Tracked vehicles that are built or modified to provide ballistic protection to their occupants and utilize a tracked system instead of wheels for forward motion.
- (4) Weapon-bearing aircraft, vessels, or vehicles of any kind, whether manned or unmanned.
- (5) Breaching apparatus designed to provide rapid entry into a building or through a secured doorway, including equipment that is mechanical, such as a battering ram, and equipment that is ballistic, such as a slug, or equipment that is explosive in nature.
- (6) Firearms of .50 caliber or greater.
- (7) Ammunition of .50 caliber or greater.
- (8) Specialized firearms and associated ammunition of less than .50 caliber, as defined in Sections 30510 and 30515 of the California Penal Code.
- (9) Projectile launch platforms and their associated munitions, such as 40mm projectile launchers, "bean bag", rubber bullet, or specialty impact munition (SIM) weapons, and "riot guns" used to disperse chemical agents.
- (10) Any knife designed to be attached to the muzzle of a rifle, shotgun, or long gun for purposes of hand-to-hand combat.
- (11) Explosives, pyrotechnics, such as "flashbang" grenades, explosive breaching tools, and chemical weapons such as "teargas", CS gas, pepper spray, and "pepper balls".
- (12) Crowd-control equipment, such as riot batons, riot helmets, and riot shields, but excluding service-issued telescopic or fixed length straight batons.
- (13) Active area denial weapons, such as the Taser Shockwave, microwave weapons, water cannons, and the Long Range Acoustic Device (LRAD).
  - (a) Only LRAD as an area denial tool shall trigger the reporting requirements of this ordinance.
- (13) Any other equipment as determined by the City Council to require additional oversight.

(B) "City" means any department, agency, bureau, and/or subordinate division of the City of Berkeley.

(C) "City Staff" means City personnel authorized by the City Administrator or designee to seek City Council approval of the acquisition of Controlled Equipment in conformance with this Ordinance.

(D) "Controlled Equipment Impact Statement" means a publicly released, written document that includes, at a minimum, all of the following:

- (1) Description: A description of each type of Controlled Equipment, the quantity sought, its capabilities, expected lifespan, intended uses and effects, and how it works, including product descriptions from the manufacturer of the Controlled Equipment.
- (2) Purpose: The purposes and reasons for which the Berkeley Police Department (hereinafter, "Police Department") proposes to use each type of Controlled Equipment.
- (3) Fiscal Cost: The fiscal cost of each type of Controlled Equipment, including the initial costs of obtaining the equipment, the costs of each proposed use, the costs of potential

adverse impacts, and the annual, ongoing costs of the equipment, including operating, training, transportation, storage, maintenance, and upgrade costs.

(4) Impact: An assessment specifically identifying any potential impacts that the use of Controlled Equipment might have on the welfare, safety, civil rights, and civil liberties of the public, and what specific affirmative measures will be implemented to safeguard the public from potential adverse impacts.

(5) Mitigations: Specific, affirmative technical and procedural measures that will be implemented to safeguard the public from such impacts.

(6) Alternatives: Alternative method or methods by which the Police Department can accomplish the purposes for which the Controlled Equipment is proposed to be used, the annual costs of alternative method or methods, and the potential impacts of alternative method or methods on the welfare, safety, civil rights, and civil liberties of the public.

(7) Location: The location(s) it may be used, using general descriptive terms.

(8) Third Party Dependence: Whether use or maintenance of the Controlled Equipment will require the engagement of third party service providers.

(9) Track Record: A summary of the experience (if any) other entities, especially government entities have had with the proposed Controlled Equipment, including, if available, quantitative information about the effectiveness of the Controlled Equipment in achieving its stated purpose in other jurisdictions, and any known adverse information about the Controlled Equipment (such as unanticipated costs, failures, or civil rights and civil liberties abuses).

(E) "Controlled Equipment Use Policy" means a publicly released, legally enforceable written document governing the use of Controlled Equipment by the Berkeley Police Department that addresses, at a minimum, all of the following:

(1) Purpose: The specific purpose or purposes that each type of Controlled Equipment is intended to achieve.

(2) Authorized Use: The specific uses of Controlled Equipment that are authorized, and rules and processes required prior to such use.

(3) Prohibited uses: A non-exclusive list of uses that are not authorized.

(4) Training: The course of training that must be completed before any officer, agent, or employee of the Police Department is allowed to use each specific type of Controlled Equipment.

(4) Auditing and Oversight: The mechanisms to ensure compliance with the Controlled Equipment Use Policy, including which independent persons or entities have oversight authority, and what legally enforceable sanctions are put in place for violations of the policy.

(5) Transparency: The procedures by which members of the public may register complaints or concerns or submit questions about the use of each specific type of Controlled Equipment, and how the Police Department will ensure that each complaint, concern, or question receives a response in a timely manner.

(F) "Police Area" refers to each of the geographic districts assigned to a police commander and as such districts are amended from time to time.

(G) "Exigent Circumstances" means a law enforcement agency's good faith belief that an emergency involving the danger of, or imminent threat of death or serious physical injury to any person requires the use of unapproved Controlled Equipment.

**2. ~~100.03064-1720-030~~. Acquisition and Use of Controlled Equipment.**

(A) Restrictions Prior to Submission and Approval

(1) The Berkeley Police Department shall submit to the Berkeley Police Review Commission (hereinafter "Police Review Commission"), or any successive agency, a Controlled Equipment Impact Report and a Controlled Equipment Use Policy prior to engaging in any of the following:

(a) Requesting the transfer of Controlled Equipment pursuant to Section 2576a of Title 10 of the United States Code.

(b) Seeking funds for Controlled Equipment, including, but not limited to, applying for a grant, soliciting or accepting private, local, state, or federal funds, in-kind donations, or other donations or transfers.

(c) Acquiring Controlled Equipment either permanently or temporarily, including by borrowing or leasing.

(d) Collaborating with another law enforcement agency, such as commanding, controlling, or otherwise directing that agency or its personnel, in the deployment or other use of Controlled Equipment within Berkeley.

(e) Using any new or existing Controlled Equipment for a purpose, in a manner, or by a person not previously approved by the governing body pursuant to this Ordinance.

(f) Soliciting or responding to a proposal for, or entering into an agreement with, any other person or entity to seek funds for, apply to receive, acquire, use, or collaborate in the use of, Controlled Equipment.

(2) The funding, acquisition, or use of Controlled Equipment by the Police Department shall not be permitted without the review and recommendation, by the Police Review Commission, and approval, by City Council, of a Controlled Equipment Impact Report and a Controlled Equipment Use Policy submitted pursuant to this Ordinance.

(a) The Chair of the Police Review Commission, in consultation with the Vice Chair, may provide limited approval, in writing, for the Department to solicit funding for Controlled Equipment prior to the submission of a Controlled Equipment Impact Report and a Controlled Equipment Use Policy.

(b) Controlled Equipment funded under the exception provided by this subsection shall not be used unless a Controlled Equipment Impact Report and Controlled Equipment Use Policy is subsequently submitted to the Police Review Commission for review and subsequently approved by City Council, pursuant to the general requirements of this section.



(3) The Police Department shall not cooperate with law enforcement agencies or mutual aid partners that deploy Controlled Equipment that would be subject to this ordinance unless said cooperation and deployment of Controlled Equipment by such agency or mutual aid partner is consistent with the restrictions, use policies, and reporting requirements established by this ordinance.

(B) Submission to Police Review Commission

(1) When seeking the review and recommendation of the Police Review Commission, the Police Department shall submit to the Police Review Commission a proposed Controlled Equipment Impact Report and a Controlled Equipment Use Policy.

(2) At least 15 days prior to any public hearing concerning the Controlled Equipment at issue, the Department shall publish the proposed Controlled Equipment Impact Report and Controlled Equipment Use Policy for public review. Publishing to the Department's website shall satisfy the requirements of this subsection.

(3) In order to facilitate public participation, any proposed or final Controlled Equipment Impact Report and Controlled Equipment Use Policy shall be made publicly available on the Department's website for as long as the Controlled Equipment is proposed or available for use.

(4) The Police Review Commission shall consider Controlled Equipment Impact Reports and Controlled Equipment Use Policies as an agenda item for review at an open session of a regularly noticed meeting.

(C) Criteria for Police Review Commission Recommendations

(1) The Police Review Commission shall only recommend approval of a request to fund, acquire, or use Controlled Equipment pursuant to this chapter if it determines all of the following:

(a) The Controlled Equipment is needed despite available alternatives.

(b) The proposed Controlled Equipment Use Policy will safeguard the public's welfare, safety, civil rights, and civil liberties.

(c) The use of Controlled Equipment will not be used based on race, national origin, religion, sexual orientation, gender, gender identity, political viewpoint, or disability, or disproportionately impact any community or group.

(d) The use of Controlled Equipment is the most cost-effective option among all available alternatives.

(2) If the submitted Controlled Equipment Impact Report identifies a risk of potential adverse effects on the public's welfare, safety, civil rights, or civil liberties, a recommendation for approval for the funding, acquisition, or use of Controlled Equipment by the Police Review Commission pursuant to this Ordinance shall not be deemed an acquiescence to those effects, but instead an acknowledgment of the risk of those effects and the need to avoid them proactively.

(E) Police Review Commission Review Required Before City Council Consideration of Approval.

(1) The Police Review Commission shall recommend that the City Council adopt, modify, or reject the proposed Controlled Equipment Use Policy.

(a) If the Police Review Commission proposes that the Controlled Equipment Use Policy be modified or rejected, the Police Review Commission shall propose such modifications to City Staff. City Staff shall present such modifications or notice of rejection to City Council when seeking City Council approval pursuant to this Ordinance.

(b) Failure by the Police Review Commission to make its recommendation on a proposal within ninety (90) days of submission shall enable City Staff to proceed to the City Council for approval of the proposal.

(F) Police Review Commission Review of Prior Recommendations

(1) The Police Review Commission shall review any recommendation that it has adopted pursuant to this Ordinance approving the funding, acquisition, or use of Controlled Equipment at least annually and vote on whether to recommend renewal of the approval.

(2) A Police Review Commission recommendation to City Council that a prior approval be revoked shall be presented to Council for immediate consideration. If City Council has not reviewed and taken action on a Police Review Commission recommendation that a prior approval be revoked within four (4) City Council meetings from when the item was initially scheduled for City Council consideration, the City shall cease its use of the Controlled Equipment.

(G) Review Process for Previously-Acquired Equipment

(1) The Police Department shall have one year from the date of passage of this Ordinance to submit Controlled Equipment Use Policies and Controlled Equipment Impact Statements for approval pursuant to this Ordinance if the Department wishes to continue the use of Controlled Equipment acquired prior to the passage of this Ordinance. The Department shall cease the use of Controlled Equipment acquired prior to the date of passage of this ordinance if, after one year, no approval, pursuant to the requirements of this Ordinance, has been granted.

(2) In order to ensure that the review of previously-acquired Controlled Equipment is appropriately prioritized, the Police Department shall provide a prioritized ranking of Controlled Equipment possessed and/or used by the City, and the Police Review Commission shall consider this ranking in determining order in which previously-acquired Controlled Equipment that is prioritized for review.

(H) City Council Approval Process

(1) After the Police Review Commission Notification and Review requirements have been met, City Staff seeking City Council approval shall schedule for City Council consideration the proposed Controlled Equipment Impact Report and proposed

Controlled Equipment Use Policy, and include Police Review Commission recommendations, at least fifteen (15) days prior to a public meeting.

(2) The City Council shall only approve a proposed Controlled Equipment Impact Report and proposed Controlled Equipment Use Policy after first considering the recommendation of the Police Review Commission, and subsequently making a determination that the City's interest in community safety outweighs the potential adverse ~~ea~~ffects of using Controlled Equipment.

(3) For approval of existing Controlled Equipment for which the Police Review Commission has failed to make a recommendation within ninety (90) days as provided by this Section, if the City Council has not reviewed and approved such item within four

(4) City Council meetings from when the item was initially scheduled for City Council consideration, the City shall cease its use of the Controlled Equipment until such review and approval occurs.

## **~~2.64.170.0403-100.040~~ Reports on the Use of Controlled Equipment.**

(A) Annual Report on Controlled Equipment

(1) The Berkeley Police Department shall submit to the Police Review Commission an annual report on Controlled Equipment to the Police Review Commission within one year of approval, and annually thereafter for as long as the Controlled Equipment is available for use. The annual report shall be provided no later than March 15th of each year, unless the Police Review Commission advises the Police Department that an alternate date is preferred. The Police Department shall also make each annual report required by this section publicly available on its website for as long as the Controlled Equipment is available for use. The annual report shall, at a minimum, include the following information for the immediately preceding calendar year:

(a) Production descriptions for Controlled Equipment and inventory numbers of each product in the Police Department's possession.

(b) A summary of how Controlled Equipment was used.

(c) If applicable, a breakdown of where Controlled Equipment was used geographically by individual police area. For each police area, the Police Department shall report the number of days Controlled Equipment was used and what percentage of those daily reported uses were authorized by warrant and by non-warrant forms of court authorization.

(d) A summary of any complaints or concerns received concerning Controlled Equipment.

(e) The results of any internal audits, any information about violations of Controlled Equipment Use Policies, and any actions taken in response.

(f) The total annual cost for each type of Controlled Equipment, including acquisition, personnel, training, transportation, maintenance, storage, upgrade, and other ongoing costs, and from what source funds will be provided for Controlled Equipment in the calendar year following submission of the annual report.

(2) Within 60 days of the Police Department submitting and publicly releasing an annual report pursuant to this section, the Police Review Commission shall place the report as an agenda item for an open session of a regular meeting. After review and approval by the Police Review Commission, City Staff shall submit the annual report to City Council.

(C) Compliance & Revocation of Approval

(1) The Police Review Commission shall determine, based on the annual report submitted pursuant to Section 4, whether each type of Controlled Equipment identified in that report has complied with the standards for approval set forth in Section 3. If the Police Review Commission determines that any Controlled Equipment identified in the annual report has not complied with the standards for approval set forth in Section 3, the Police Review Commission shall either recommend revocation of the authorization for that piece of Controlled Equipment or modify the Controlled Equipment Use Policy in a manner that will resolve the lack of compliance. Recommendations for revocations pursuant to this section shall be forwarded to City Council in accordance with the approval process in Section 3.

**2.64.1740.050-100.050 Enforcement.**

(A) Remedies for Violations of this Ordinance

(1) Any violation of this Ordinance, or of a Controlled Equipment Use Policy promulgated under this Ordinance, constitutes an injury and any person may institute proceedings for injunctive relief, declaratory relief, or writ of mandate in the Superior Court of the State of California to enforce this Ordinance. An action instituted under this paragraph shall be brought against the respective city department, and the City of Berkeley, and, if necessary to effectuate compliance with this Ordinance or a Controlled Equipment acquisition or use policy, any other governmental agency with possession, custody, or control of Controlled Equipment subject to this Ordinance, to the extent permitted by law.

(2) Any person who has been subjected to the use of Controlled Equipment in violation of this Ordinance may institute proceedings in the Superior Court of the State of California against the City of Berkeley and shall be entitled to recover actual damages (but not less than liquidated damages of one thousand dollars (\$1,000.00) or one hundred dollars (\$100.00) per day for each day of violation, whichever is greater).

(3) A court shall award costs and reasonable attorneys' fees to the plaintiff who is the prevailing party in an action brought under subpart (1) or (2) above.

(4) Violations of this Ordinance by a city employee may result in consequences that may include retraining, suspension, or termination, subject to due process requirements.

**2. ~~100.06064.1750.060~~ Transparency**

(A) Disclosure Requirements

(1) It shall be unlawful for the City to enter into any Controlled Equipment-related contract or other agreement that conflicts with the provisions of this Ordinance, and any conflicting provisions in such future contracts or agreements, including but not limited to non-disclosure agreements, shall be deemed void and legally unenforceable.

(2) To the extent permitted by law, the City shall publicly disclose all of its Controlled Equipment-related contracts, including any and all related non-disclosure agreements, if any, regardless of any contract terms to the contrary.

**2. ~~100.07064.1760.070~~ Whistleblower Protections.**

(A) Protections Against Retaliation

(1) Neither the City nor anyone acting on behalf of the City may take or fail to take, or threaten to take or fail to take, a personnel action with respect to any employee or applicant for employment, including but not limited to discriminating with respect to compensation, terms and conditions of employment, access to information, restrictions on due process rights, or civil or criminal liability, because:

(a) The employee or applicant was perceived to, about to, or assisted in any lawful disclosure of information concerning the funding, acquisition, or use of Controlled Equipment based upon a good faith belief that the disclosure evidenced a violation of this Ordinance; or

(b) The employee or applicant was perceived to, about to, or assisted or participated in any proceeding or action to carry out the purposes of this Ordinance.

(c) It shall be grounds for disciplinary action for a city employee or anyone else acting on behalf of the city to retaliate against another city employee or applicant who makes a good-faith complaint that there has been a failure to comply with any Controlled Equipment Use Policy or administrative instruction promulgated under this Ordinance.

(d) Any employee or applicant who is injured by a violation of this Section may institute a proceeding for monetary damages and injunctive relief against the city in any court of competent jurisdiction.

**2. ~~64.177100.080 0-080~~ Severability**

If any section, subsection, sentence, clause, phrase, or word of this Chapter, or any application thereof to any person or circumstance, is held to be invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions or applications of this Chapter. The Council of the City of Berkeley hereby declares that it would have passed this Chapter and each and every section, subsection, sentence, clause, phrase, and word not declared invalid or unconstitutional without regard to whether any other portion of this Chapter or application thereof would be subsequently declared invalid or unconstitutional.

Section 3. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

ORDINANCE NO. -N.S.

ORDINANCE ADDING CHAPTER 2.64.170 TO THE BERKELEY MUNICIPAL CODE  
REGULATING POLICE ACQUISITION AND USE OF CONTROLLED EQUIPMENT

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. The Berkeley Municipal Code Chapter 2.64.170 is added to read as follows:

**Chapter 2.64.170**  
**POLICE EQUIPMENT AND COMMUNITY SAFETY ORDINANCE**

**Sections:**

- 2.64.170.010 Findings and Purpose**
- 2.64.170.020 Prohibited Conduct**
- 2.64.170.030 Definitions**
- 2.64.170.040 Collection of Back Rent**
- 2.64.170.050 Application**
- 2.64.170.060 Implementing Regulations**
- 2.64.170.070 Waiver**
- 2.64.170.080 Remedies**

**2.64.170.010 Name of Ordinance.**

(A) This Ordinance shall be known as the Police Equipment and Community Safety Ordinance.

**2.64.170.020. Definitions**

A. "Controlled Equipment" means equipment that is military or militaristic in nature and includes, but is not limited to, all of the following:

(1) Special-purpose wheeled vehicles that are either built or modified to provide ballistic protection to their occupants, such as mine-resistant ambush protected (MRAP) vehicles or armored personnel carriers.

(a) Police versions of standard passenger vehicles are specifically excluded from this section.

(2) Multi-purpose wheeled vehicles that are either built to operate both on-road and off-road, such as a high mobility multipurpose wheeled vehicle (HMMWV), commonly referred to as a Humvee, a two and one-half-ton truck, or a five-ton truck, or vehicles built or modified to use a breaching or entry apparatus as an attachment.

(a) Unarmored all-terrain vehicles (ATVs) and motorized dirt bikes are specifically excluded from this section.

- (3) Tracked vehicles that are built or modified to provide ballistic protection to their occupants and utilize a tracked system instead of wheels for forward motion.
- (4) Weapon-bearing aircraft, vessels, or vehicles of any kind, whether manned or unmanned.
- (5) Breaching apparatus designed to provide rapid entry into a building or through a secured doorway, including equipment that is mechanical, such as a battering ram, and equipment that is ballistic, such as a slug, or equipment that is explosive in nature.
- (6) Firearms of .50 caliber or greater.
- (7) Ammunition of .50 caliber or greater.
- (8) Specialized firearms and associated ammunition of less than .50 caliber, as defined in Sections 30510 and 30515 of the California Penal Code.
- (9) Projectile launch platforms and their associated munitions, such as 40mm projectile launchers, "bean bag", rubber bullet, or specialty impact munition (SIM) weapons, and "riot guns" used to disperse chemical agents.
- (10) Any knife designed to be attached to the muzzle of a rifle, shotgun, or long gun for purposes of hand-to-hand combat.
- (11) Explosives, pyrotechnics, such as "flashbang" grenades, explosive breaching tools, and chemical weapons such as "teargas", CS gas, pepper spray, and "pepper balls".
- (12) Crowd-control equipment, such as riot batons, riot helmets, and riot shields, but excluding service-issued telescopic or fixed length straight batons.
- (13) Active area denial weapons, such as the Taser Shockwave, microwave weapons, water cannons, and the Long Range Acoustic Device (LRAD).
  - (a) Only LRAD as an area denial tool shall trigger the reporting requirements of this ordinance.
- (13) Any other equipment as determined by the City Council to require additional oversight.

(B) "City" means any department, agency, bureau, and/or subordinate division of the City of Berkeley.

(C) "City Staff" means City personnel authorized by the City Administrator or designee to seek City Council approval of the acquisition of Controlled Equipment in conformance with this Ordinance.

(D) "Controlled Equipment Impact Statement" means a publicly released, written document that includes, at a minimum, all of the following:

- (1) Description: A description of each type of Controlled Equipment, the quantity sought, its capabilities, expected lifespan, intended uses and effects, and how it works, including product descriptions from the manufacturer of the Controlled Equipment.
- (2) Purpose: The purposes and reasons for which the Berkeley Police Department (hereinafter, "Police Department") proposes to use each type of Controlled Equipment.
- (3) Fiscal Cost: The fiscal cost of each type of Controlled Equipment, including the initial costs of obtaining the equipment, the costs of each proposed use, the costs of potential



adverse impacts, and the annual, ongoing costs of the equipment, including operating, training, transportation, storage, maintenance, and upgrade costs.

(4) Impact: An assessment specifically identifying any potential impacts that the use of Controlled Equipment might have on the welfare, safety, civil rights, and civil liberties of the public, and what specific affirmative measures will be implemented to safeguard the public from potential adverse impacts.

(5) Mitigations: Specific, affirmative technical and procedural measures that will be implemented to safeguard the public from such impacts.

(6) Alternatives: Alternative method or methods by which the Police Department can accomplish the purposes for which the Controlled Equipment is proposed to be used, the annual costs of alternative method or methods, and the potential impacts of alternative method or methods on the welfare, safety, civil rights, and civil liberties of the public.

(7) Location: The location(s) it may be used, using general descriptive terms.

(8) Third Party Dependence: Whether use or maintenance of the Controlled Equipment will require the engagement of third party service providers.

(9) Track Record: A summary of the experience (if any) other entities, especially government entities have had with the proposed Controlled Equipment, including, if available, quantitative information about the effectiveness of the Controlled Equipment in achieving its stated purpose in other jurisdictions, and any known adverse information about the Controlled Equipment (such as unanticipated costs, failures, or civil rights and civil liberties abuses).

(E) "Controlled Equipment Use Policy" means a publicly released, legally enforceable written document governing the use of Controlled Equipment by the Berkeley Police Department that addresses, at a minimum, all of the following:

(1) Purpose: The specific purpose or purposes that each type of Controlled Equipment is intended to achieve.

(2) Authorized Use: The specific uses of Controlled Equipment that are authorized, and rules and processes required prior to such use.

(3) Prohibited uses: A non-exclusive list of uses that are not authorized.

(4) Training: The course of training that must be completed before any officer, agent, or employee of the Police Department is allowed to use each specific type of Controlled Equipment.

(4) Auditing and Oversight: The mechanisms to ensure compliance with the Controlled Equipment Use Policy, including which independent persons or entities have oversight authority, and what legally enforceable sanctions are put in place for violations of the policy.

(5) Transparency: The procedures by which members of the public may register complaints or concerns or submit questions about the use of each specific type of Controlled Equipment, and how the Police Department will ensure that each complaint, concern, or question receives a response in a timely manner.

(F) "Police Area" refers to each of the geographic districts assigned to a police commander and as such districts are amended from time to time.

(G) "Exigent Circumstances" means a law enforcement agency's good faith belief that an emergency involving the danger of, or imminent threat of death or serious physical injury to any person requires the use of unapproved Controlled Equipment.

#### **2.64.170.030. Acquisition and Use of Controlled Equipment.**

##### **(A) Restrictions Prior to Submission and Approval**

(1) The Berkeley Police Department shall submit to the Berkeley Police Commission (hereinafter "Police Commission") a Controlled Equipment Impact Report and a Controlled Equipment Use Policy prior to engaging in any of the following:

(a) Requesting the transfer of Controlled Equipment pursuant to Section 2576a of Title 10 of the United States Code.

(b) Seeking funds for Controlled Equipment, including, but not limited to, applying for a grant, soliciting or accepting private, local, state, or federal funds, in-kind donations, or other donations or transfers.

(c) Acquiring Controlled Equipment either permanently or temporarily, including by borrowing or leasing.

(d) Collaborating with another law enforcement agency, such as commanding, controlling, or otherwise directing that agency or its personnel, in the deployment or other use of Controlled Equipment within Berkeley.

(e) Using any new or existing Controlled Equipment for a purpose, in a manner, or by a person not previously approved by the governing body pursuant to this Ordinance.

(f) Soliciting or responding to a proposal for, or entering into an agreement with, any other person or entity to seek funds for, apply to receive, acquire, use, or collaborate in the use of, Controlled Equipment.

(2) The funding, acquisition, or use of Controlled Equipment by the Police Department shall not be permitted without the review and recommendation, by the Police Commission, and approval, by City Council, of a Controlled Equipment Impact Report and a Controlled Equipment Use Policy submitted pursuant to this Ordinance.

(a) The Chair of the Police Commission, in consultation with the Vice Chair, may provide limited approval, in writing, for the Department to solicit funding for Controlled Equipment prior to the submission of a Controlled Equipment Impact Report and a Controlled Equipment Use Policy.

(b) Controlled Equipment funded under the exception provided by this subsection shall not be used unless a Controlled Equipment Impact Report and Controlled Equipment Use Policy is subsequently submitted to the Police Commission for review and subsequently approved by City Council, pursuant to the general requirements of this section.

(3) The Police Department shall not cooperate with law enforcement agencies or mutual aid partners that deploy Controlled Equipment that would be subject to this ordinance unless said cooperation and deployment of Controlled Equipment by such agency or mutual aid partner is consistent with the restrictions, use policies, and reporting requirements established by this ordinance.

(B) Submission to Police Commission

(1) When seeking the review and recommendation of the Police Commission, the Police Department shall submit to the Police Commission a proposed Controlled Equipment Impact Report and a Controlled Equipment Use Policy.

(2) At least 15 days prior to any public hearing concerning the Controlled Equipment at issue, the Department shall publish the proposed Controlled Equipment Impact Report and Controlled Equipment Use Policy for public review. Publishing to the Department's website shall satisfy the requirements of this subsection.

(3) In order to facilitate public participation, any proposed or final Controlled Equipment Impact Report and Controlled Equipment Use Policy shall be made publicly available on the Department's website for as long as the Controlled Equipment is proposed or available for use.

(4) The Police Commission shall consider Controlled Equipment Impact Reports and Controlled Equipment Use Policies as an agenda item for review at an open session of a regularly noticed meeting.

(C) Criteria for Police Commission Recommendations

(1) The Police Commission shall only recommend approval of a request to fund, acquire, or use Controlled Equipment pursuant to this chapter if it determines all of the following:

(a) The Controlled Equipment is needed despite available alternatives.

(b) The proposed Controlled Equipment Use Policy will safeguard the public's welfare, safety, civil rights, and civil liberties.

(c) The use of Controlled Equipment will not be used based on race, national origin, religion, sexual orientation, gender, gender identity, political viewpoint, or disability, or disproportionately impact any community or group.

(d) The use of Controlled Equipment is the most cost-effective option among all available alternatives.

(2) If the submitted Controlled Equipment Impact Report identifies a risk of potential adverse effects on the public's welfare, safety, civil rights, or civil liberties, a recommendation for approval for the funding, acquisition, or use of Controlled Equipment by the Police Commission pursuant to this Ordinance shall not be deemed an acquiescence to those effects, but instead an acknowledgment of the risk of those effects and the need to avoid them proactively.

(E) Police Commission Review Required Before City Council Consideration of Approval.

(1) The Police Commission shall recommend that the City Council adopt, modify, or reject the proposed Controlled Equipment Use Policy.

(a) If the Police Commission proposes that the Controlled Equipment Use Policy be modified or rejected, the Police Commission shall propose such modifications to City Staff. City Staff shall present such modifications or notice of rejection to City Council when seeking City Council approval pursuant to this Ordinance.

(b) Failure by the Police Commission to make its recommendation on a proposal within ninety (90) days of submission shall enable City Staff to proceed to the City Council for approval of the proposal.

#### (F) Police Commission Review of Prior Recommendations

(1) The Police Commission shall review any recommendation that it has adopted pursuant to this Ordinance approving the funding, acquisition, or use of Controlled Equipment at least annually and vote on whether to recommend renewal of the approval.

(2) A Police Commission recommendation to City Council that a prior approval be revoked shall be presented to Council for immediate consideration. If City Council has not reviewed and taken action on a Police Commission recommendation that a prior approval be revoked within four (4) City Council meetings from when the item was initially scheduled for City Council consideration, the City shall cease its use of the Controlled Equipment.

#### (G) Review Process for Previously-Acquired Equipment

(1) The Police Department shall have one year from the date of passage of this Ordinance to submit Controlled Equipment Use Policies and Controlled Equipment Impact Statements for approval pursuant to this Ordinance if the Department wishes to continue the use of Controlled Equipment acquired prior to the passage of this Ordinance. The Department shall cease the use of Controlled Equipment acquired prior to the date of passage of this ordinance if, after one year, no approval, pursuant to the requirements of this Ordinance, has been granted.

(2) In order to ensure that the review of previously-acquired Controlled Equipment is appropriately prioritized, the Police Department shall provide a prioritized ranking of Controlled Equipment possessed and/or used by the City, and the Police Commission shall consider this ranking in determining order in which previously-acquired Controlled Equipment that is prioritized for review.

#### (H) City Council Approval Process

(1) After the Police Commission Notification and Review requirements have been met, City Staff seeking City Council approval shall schedule for City Council consideration the proposed Controlled Equipment Impact Report and proposed Controlled Equipment Use Policy, and include Police Commission recommendations, at least fifteen (15) days prior to a public meeting.

(2) The City Council shall only approve a proposed Controlled Equipment Impact Report and proposed Controlled Equipment Use Policy after first considering the recommendation of the Police Commission, and subsequently making a determination that the City's interest in community safety outweighs the potential adverse affects of using Controlled Equipment.

(3) For approval of existing Controlled Equipment for which the Police Commission has failed to make a recommendation within ninety (90) days as provided by this Section, if the City Council has not reviewed and approved such item within four (4) City Council meetings from when the item was initially scheduled for City Council consideration, the City shall cease its use of the Controlled Equipment until such review and approval occurs.

#### **2.64.170.040. Reports on the Use of Controlled Equipment.**

##### **(A) Annual Report on Controlled Equipment**

(1) The Berkeley Police Department shall submit to the Police Commission an annual report on Controlled Equipment to the Police Commission within one year of approval, and annually thereafter for as long as the Controlled Equipment is available for use. The annual report shall be provided no later than March 15th of each year, unless the Police Commission advises the Police Department that an alternate date is preferred. The Police Department shall also make each annual report required by this section publicly available on its website for as long as the Controlled Equipment is available for use. The annual report shall, at a minimum, include the following information for the immediately preceding calendar year:

- (a) Production descriptions for Controlled Equipment and inventory numbers of each product in the Police Department's possession.
  - (b) A summary of how Controlled Equipment was used.
  - (c) If applicable, a breakdown of where Controlled Equipment was used geographically by individual police area. For each police area, the Police Department shall report the number of days Controlled Equipment was used and what percentage of those daily reported uses were authorized by warrant and by non-warrant forms of court authorization.
  - (d) A summary of any complaints or concerns received concerning Controlled Equipment.
  - (e) The results of any internal audits, any information about violations of Controlled Equipment Use Policies, and any actions taken in response.
  - (f) The total annual cost for each type of Controlled Equipment, including acquisition, personnel, training, transportation, maintenance, storage, upgrade, and other ongoing costs, and from what source funds will be provided for Controlled Equipment in the calendar year following submission of the annual report.
- (2) Within 60 days of the Police Department submitting and publicly releasing an annual report pursuant to this section, the Police Commission shall place the report as an

agenda item for an open session of a regular meeting. After review and approval by the Police Commission, City Staff shall submit the annual report to City Council.

(C) Compliance & Revocation of Approval

(1) The Police Commission shall determine, based on the annual report submitted pursuant to Section 4, whether each type of Controlled Equipment identified in that report has complied with the standards for approval set forth in Section 3. If the Police Commission determines that any Controlled Equipment identified in the annual report has not complied with the standards for approval set forth in Section 3, the Police Commission shall either recommend revocation of the authorization for that piece of Controlled Equipment or modify the Controlled Equipment Use Policy in a manner that will resolve the lack of compliance. Recommendations for revocations pursuant to this section shall be forwarded to City Council in accordance with the approval process in Section 3.

**2.64.170.050. Enforcement.**

(A) Remedies for Violations of this Ordinance

(1) Any violation of this Ordinance, or of a Controlled Equipment Use Policy promulgated under this Ordinance, constitutes an injury and any person may institute proceedings for injunctive relief, declaratory relief, or writ of mandate in the Superior Court of the State of California to enforce this Ordinance. An action instituted under this paragraph shall be brought against the respective city department, and the City of Berkeley, and, if necessary to effectuate compliance with this Ordinance or a Controlled Equipment acquisition or use policy, any other governmental agency with possession, custody, or control of Controlled Equipment subject to this Ordinance, to the extent permitted by law.

(2) Any person who has been subjected to the use of Controlled Equipment in violation of this Ordinance may institute proceedings in the Superior Court of the State of California against the City of Berkeley and shall be entitled to recover actual damages (but not less than liquidated damages of one thousand dollars (\$1,000.00) or one hundred dollars (\$100.00) per day for each day of violation, whichever is greater).

(3) A court shall award costs and reasonable attorneys' fees to the plaintiff who is the prevailing party in an action brought under subpart (1) or (2) above.

(4) Violations of this Ordinance by a city employee may result in consequences that may include retraining, suspension, or termination, subject to due process requirements.

**2.64.170.060. Transparency**

(A) Disclosure Requirements

(1) It shall be unlawful for the City to enter into any Controlled Equipment-related contract or other agreement that conflicts with the provisions of this Ordinance, and any conflicting provisions in such future contracts or agreements, including but not limited to non-disclosure agreements, shall be deemed void and legally unenforceable.

(2) To the extent permitted by law, the City shall publicly disclose all of its Controlled Equipment-related contracts, including any and all related non-disclosure agreements, if any, regardless of any contract terms to the contrary.

**2.64.170.070. Whistleblower Protections.**

(A) Protections Against Retaliation

(1) Neither the City nor anyone acting on behalf of the City may take or fail to take, or threaten to take or fail to take, a personnel action with respect to any employee or applicant for employment, including but not limited to discriminating with respect to compensation, terms and conditions of employment, access to information, restrictions on due process rights, or civil or criminal liability, because:

(a) The employee or applicant was perceived to, about to, or assisted in any lawful disclosure of information concerning the funding, acquisition, or use of Controlled Equipment based upon a good faith belief that the disclosure evidenced a violation of this Ordinance; or

(b) The employee or applicant was perceived to, about to, or assisted or participated in any proceeding or action to carry out the purposes of this Ordinance.

(c) It shall be grounds for disciplinary action for a city employee or anyone else acting on behalf of the city to retaliate against another city employee or applicant who makes a good-faith complaint that there has been a failure to comply with any Controlled Equipment Use Policy or administrative instruction promulgated under this Ordinance.

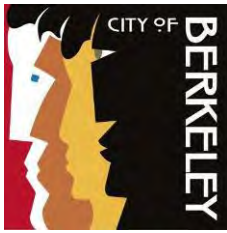
(d) Any employee or applicant who is injured by a violation of this Section may institute a proceeding for monetary damages and injunctive relief against the city in any court of competent jurisdiction.

**2.64.170.080 Severability**

If any section, subsection, sentence, clause, phrase, or word of this Chapter, or any application thereof to any person or circumstance, is held to be invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions or applications of this Chapter. The Council of the City of Berkeley hereby declares that it would have passed this Chapter and each and every section, subsection, sentence, clause, phrase, and word not declared invalid or unconstitutional without regard to whether any other portion of this Chapter or application thereof would be subsequently declared invalid or unconstitutional.

Section 3. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.





Councilmember Ben Bartlett  
City of Berkeley, District 3

## EMERGENCY ITEM AGENDA MATERIAL

**Meeting date:** June 16, 2020  
**Item Description:** Safety for All: The George Floyd Community Safety Act - Development of a Progressive Police Academy  
**Submitted by:** Councilmember Ben Bartlett (Author), Mayor Jesse Arreguin (Co-Sponsor) and Councilmember Cheryl Davila (Co-Sponsor)

**Rationale:**

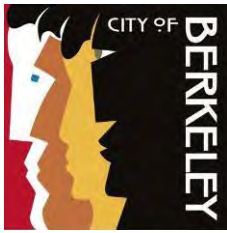
Pursuant to California Government Code Section 54954.2(b) (2), Councilmember Ben Bartlett submits the attached item to the City Council for placement on the June 16, 2020 meeting agenda. Gov. Code Section 54954.2(b) (2) states that *“Upon a determination by a two-thirds vote of the members of a legislative body presents at the meeting, or, if less than two-thirds of the members are present, a unanimous vote of those members present, that there is a need to take immediate action and that the need for action came to the attention of the local agency subsequent to the agenda being posted as specified in subdivision (a).”*

This item meets the criteria for “immediate action” as follows:

- 1) The budget is being considered and there is public outcry for the Council to take action.
- 2) Racism Is a Public Health Emergency.
- 3) Council is considering numerous police items right now.

In all 50 states and more than 145 cities, Americans are calling for an end to police brutality, legitimate police accountability, and the transformation of the police system itself. The killing of George Floyd, a 46-year-old Black man, at the hands of police officers in Minneapolis, Minnesota followed a long series of constitutional abuses of Black men and women. Mr. Floyd’s death has proved to be the tipping point, giving rise to these waves of demonstrations, including many in the City of Berkeley. It is imperative that the City takes urgent action to end racial injustice and police brutality by considering all options.

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Councilmember Ben Bartlett  
City of Berkeley, District 3

## CONSENT CALENDAR

June 16, 2020

To: Honorable Mayor and Members of the City Council  
From: Councilmember Ben Bartlett (Author) and Mayor Jesse Arreguin (Co-Sponsor)  
Subject: Safety for All: The George Floyd Community Safety Act - Development of a Progressive Police Academy

### RECOMMENDATION:

That the City Council refers to the Public Safety Committee to develop a progressive police academy and curriculum. That this progressive academy is hosted by the City of Berkeley and offered for use by the regional. The City should hire consultants and convene stakeholders including the Police Review Commission, a community task-force, and the Berkeley Police Department to create the academy's programmatic design. Once established, Berkeley Police Department recruits will attend this academy for basic training. The training program is intended to become revenue neutral. The program will be offered on a paid subscription basis to interested jurisdictions. Berkeley's progressive police academy envisions a curriculum that teaches recruits de-escalation, empathy, and the Critical Decision-Making Model (CDM). CDM encourages officers to challenge their biases, refrain from using force when possible, and build police-community trust. By reshaping police ideology through education, the City of Berkeley can tackle police brutality and police misconduct at their roots.

### CURRENT SITUATION

It is imperative that the City of Berkeley develops, implements, and enforces a clear and effective roadmap towards making real change, ending anti-Black state racism, stopping police violence, and holding police accountable for their actions.

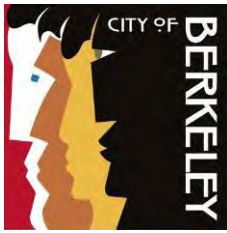
As a component of the **REDUCE, IMPROVE, RE-INVEST** framework, this item works towards the IMPROVE goal: *the City should reform current aspects of the police department to better hold its officers accountable for their actions.* Specifically, this item will develop a progressive police academy that is not paramilitary in nature and embraces non-violent approaches to curb police brutality.

### **The Current State of Berkeley Police Department Training**

The department's adopted 2019 fiscal year budget allocated \$3,433,573 for Personnel and Training<sup>1</sup>. Berkeley Police Department recruits currently train at the Contra Costa County Sheriff's Office Academy Training Center, Sacramento Police Academy, Santa

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<sup>1</sup> <https://www.cityofberkeley.info/uploadedFiles/Manager/Budget/FY-2020-2021-Adopted-Budget-Book.pdf> (p.295)



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Clara County Sheriff's Office Justice Training Center, and Alameda County Sheriff's Office Academy Training Center.

Unfortunately, these facilities are paramilitary in structure, potentially instilling the warrior mentality that forces a divide between law enforcement and the public and promotes fear. Additionally, the Alameda County Sheriff's Office's history of using military technology, deploying armored vehicles, equipping deputies with automatic rifles, and support for Urban Shield casts doubt on the ability of the Alameda County Sheriff's Office Regional Training Center in Dublin to train cadets in a progressive, non-paramilitary manner.

## BACKGROUND

### **Peace Officer Basic Training**

The Berkeley Police Department requires officers to attend a basic training academy that is approved by the Commission on Peace Officer Standards and Training.

The guidelines for police officer training are outlined by the Commission on Peace Officer Standards and Training (POST). The POST-certified Regular Basic Course (basic academy) is the training standard for police officers, deputy sheriffs, school district police officers, district attorney investigators, as well as a few other classifications of peace officers. The basic academy is both physically and mentally challenging. It includes a minimum of 664 hours of POST-developed training and testing in 42 separate areas of instruction called Learning Domains. Most POST-certified basic training academies exceed the 664 hour minimum by 200 or more hours with some academies presenting over 1000 hours of training and testing.

Academy students are subject to various written, skill, exercise, and scenario-based tests. Students must also participate in a rigorous physical conditioning program which culminates in a Work Sample Test Battery (physical ability test) at the end of the academy. Students must pass all tests in order to graduate from the basic academy.<sup>2</sup>

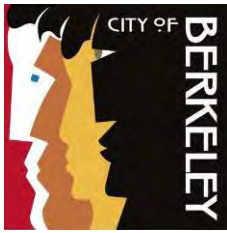
### **Progressive Police Academy Models in the United States**

Those condemning the paramilitary aspect of policing have concentrated their attention on federal military equipment transfers, and for good reason. But the police system's paramilitary nature extends beyond the equipment used on the streets. It takes on a fundamental role, weaving itself into police ideology from the very beginning.

Many police academies in the United States are paramilitary in nature and instill cadets with a warrior mentality from the start. Police training must be reformed if we are to close the divide between police and the civilians they serve.

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<sup>2</sup> <https://post.ca.gov/peace-officer-basic-training>



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Georgetown University law professor Rosa Brooks discusses several police academies that have reformed their training processes. In Washington State, the “Listen and Explain with Equity and Dignity” method trains recruits to listen, show empathy, explain their actions, and de-escalate tense situations. In Washington, D.C., the Metropolitan Police Department has brought civilian teachers and adult-learning specialists into many senior police-academy positions instead of staffing the academy solely with sworn officers. D.C. police recruits are encouraged to question and debate policies instead of just memorizing them. The department has also partnered with several local universities to develop programs designed to push both recruits and more experienced officers to critically engage with the history and practices of their profession. All officers now visit the Holocaust Memorial Museum and the National Museum of African American History and Culture, and spend a day discussing the role of police officers in perpetuating—or ending—atrocities and injustice. A select group of officers take part in the Georgetown program’s Police for Tomorrow Fellowship, where the fellows participate in intensive workshops on many of the toughest and most controversial issues in policing, including race and the legacy of racial discrimination, over-criminalization, alternatives to arrest, poverty, addiction, and homelessness. Officers visit prisons and homeless shelters and meet with local teens, and each fellow undertakes a capstone community project.

Such programs can be transformative. In D.C., many of the young officers who go through these programs credit them with changing how the officers think about their role—and their thoughtful feedback has helped fuel internal changes within the department, including some recent changes at the police academy itself.<sup>3</sup>

A new regional progressive police academy should adopt these policies or look to them as inspiration for innovation.

### **Fair and Impartial Policing (FIP)**

Fair and Impartial Policing is a philosophy and methodology of reflecting on bias, based on an understanding that all of us have biases. The old way of addressing this was to point out bad behavior and tell cops to stop the behavior. This caused some to feel police departments are full of racist, biased officers, which is not the case.<sup>4</sup>

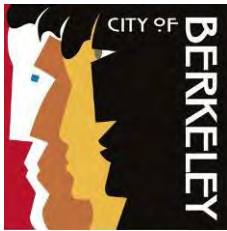
### **The Critical Decision-Making Model**

The Critical Decision-Making Model is a five-step critical thinking process developed by the Police Executive Research Forum (PERF). All five steps are built around the core values of the department and the policing profession.

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<sup>3</sup> <https://www.theatlantic.com/ideas/archive/2020/06/police-academies-paramilitary/612859/>

<sup>4</sup> <https://www.iaclea.org/assets/uploads/pdfs/CLEJ-2017-03-ProgressivePolicing.pdf>



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The thought processes embedded in the CDM are not very different from what many police officers already do on a daily basis. The CDM is certainly in line with how specialized tactical units are trained to approach their assignments. And it likely reflects the activities of many patrol officers, whether consciously or by instinct, when responding to calls for service or engaging in proactive policing. What is new and different about the CDM is that it offers a structure for working through a series of steps that officers may already be following and questions they are probably asking already. This structure helps to ensure that each critical step is followed and that all key questions are asked along the way.

At the center of the CDM is an ethical core that provides grounding and guidance for the entire process. The four elements of the CDM core are:

- Police ethics
- Agency values
- Concept of proportionality
- Sanctity of all human life

Every step of the process is connected to this core, and the core informs and guides officers throughout the five steps. Everything an officer does within the CDM must support the ideals in the center, and no action can go against those standards.

#### Step 1: Collect Information

The logical first step in the process is for officers to gather information and intelligence, a process that begins as officers are heading toward the incident. During this step, officers ask themselves and others, including Dispatch personnel, a series of key questions.

#### Step 2: Assess Situation, Threat and Risks

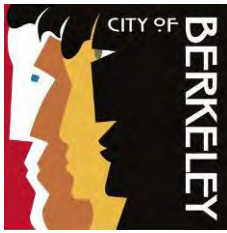
This step typically begins as officers are responding to the incident and are evaluating what they are being told by dispatchers or others. That is the time when officers begin considering “what if?” scenarios in their minds. The assessment step shifts into high gear as officers arrive on scene and can visually begin to gauge threats and risks.

#### Step 3: Consider Police Powers and Agency Policy

This step represents an important self-check of officers’ authority to take action. In addition to considering their legal authority to act, officers must think about what their agencies’ policies say about the situation.

#### Step 4: Identify Options and Determine the Best Course of Action

Using the information and assessment from earlier steps, officers now begin to narrow their options and determine the best course of action. Again, part of this step is to



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determine if the officers have enough information and resources, and a compelling interest, to act right away. Or should they hold off, possibly to get even more information and resources?

#### Step 5: Act, Review and Reassess

In this step, officers execute the plan, evaluate the impact, and determine what more, if anything, they need to do.

If the incident is not resolved, then officers should begin the Critical Decision-Making Model again, starting with the collection of additional information and intelligence.<sup>5</sup>

#### REVIEW OF EXISTING PLANS, PROGRAMS, POLICIES, AND LAWS

Before starting their career as a Police Officer for the City of Berkeley, Berkeley Police Officers must attend a Basic Training Academy that has been approved by the Commission on Peace Officer Standards and Training (POST).<sup>6</sup>

#### ACTIONS/ALTERNATIVES CONSIDERED

Alternatives considered include:

1. Instituting police reform without altering existing academies
2. Reforming existing police academies

Unfortunately, the paramilitary aspect of police culture may be planted in the beginning as officers undergo training. It is clear that police academy training must be transformed to effectively reduce police brutality.

While the City of Berkeley may advocate for the reform of existing police academies, it would have little ability to enforce necessary changes and oversee the transformation process. By starting an academy from the ground-up, the City has input at every step of the development process, and can ensure that officers of the Berkeley Police Department are properly trained.

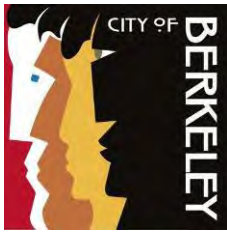
#### OUTREACH OVERVIEW AND RESULTS

The District 3 Office has consulted with David Muhammad, who is the Executive Director of the National Institute for Criminal Justice Reform; the former Chief Probation Officer in Alameda County; and the former Deputy Commissioner of Probation in New York City. David Muhammad is a leading expert on criminal justice who has helped inform our response to the current situation.

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<sup>5</sup> [https://www.policeforum.org/assets/ICAT/module%202\\_cdm\\_dec16.pdf](https://www.policeforum.org/assets/ICAT/module%202_cdm_dec16.pdf)

<sup>6</sup> [https://www.cityofberkeley.info/BPD\\_General\\_Orders.aspx](https://www.cityofberkeley.info/BPD_General_Orders.aspx)



Councilmember Ben Bartlett  
City of Berkeley, District 3

The District 3 Office has also consulted with Marcus McKinney, the Senior Director of Government Affairs & Public Policy at the Center for Policing Equity.

The District 3 Office has also consulted with Professor Tracey L. Meares, Walton Hale Hamilton Professor and Faculty Director of the Justice Collaboratory at Yale Law School.

### RATIONALE FOR RECOMMENDATION

The paramilitary aspect of policing and police academies creates a rift between law enforcement officers and the public. Many civilians cease to view the police as members of the community tasked with upholding the law, seeing instead an unpredictable occupying force with a license for violence and the armaments to do so. Their paramilitary training instills far too many officers with a warrior mentality, deepening the divide between civilians and police.

Rooting out the paramilitary aspect of policing begins with transforming police training. It necessitates equipping officers with practical and effective decision making methods that prioritize de-escalation and reserve use of force as a last resort. It necessitates teaching police officers that they have the power and the choice to perpetuate or defeat injustice. It necessitates engaging officers with the history of their profession and challenging their socioeconomic and racial biases.

### FISCAL IMPACTS OF RECOMMENDATION

This recommendation would reallocate some funding from the department's Training and Standards division to the development of a new regional police academy. Once established, Berkeley's police academy would serve as a training institution for recruits from other progressiveminded jurisdictions throughout the region. Attracting recruits from other cities and counties would potentially make this a revenue generating measure.

### ENVIRONMENTAL SUSTAINABILITY

No expected negative environmental impact.

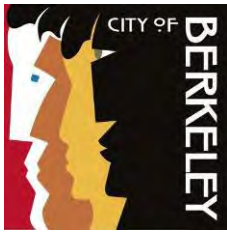
### OUTCOMES AND EVALUATION

It is expected that a new progressive police academy will be created to help recruits build a foundation of empathy and de-escalation.

### CONTACT PERSON

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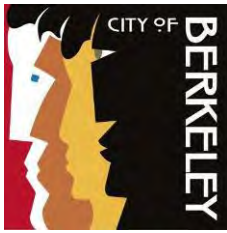
Matthew Gallati

[matthewgallati@gmail.com](mailto:matthewgallati@gmail.com)

### ATTACHMENTS

1. Critical Decision-Making Model Chart
2. Cover Letter - Safety for All: George Floyd Community Safety Act
  - <https://drive.google.com/file/d/16pqqd9J6NPRzh6298Bgazo7jw1qxTK6Y/view?usp=sharing>





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